

**MEMBERS' DAY HEARING ON PROPOSED RULES
CHANGES FOR THE 115TH CONGRESS**

**HEARING
BEFORE THE
SUBCOMMITTEE ON
RULES AND ORGANIZATION
OF THE HOUSE
COMMITTEE ON RULES
U.S. HOUSE OF REPRESENTATIVES
ONE HUNDRED FOURTEENTH CONGRESS
SECOND SESSION
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MEMBERS' DAY HEARING ON PROPOSED RULE CHANGES FOR THE 115TH CONGRESS

WEDNESDAY, SEPTEMBER 14, 2016

HOUSE OF REPRESENTATIVES,
COMMITTEE ON RULES,
SUBCOMMITTEE ON RULES AND
ORGANIZATION OF THE HOUSE,
Washington, DC.

The subcommittee met, pursuant to call, at 10:04 a.m., in Room H-313, The Capitol, Hon. Steve Stivers (chairman of the subcommittee) presiding.

Present: Representatives Stivers, Collins, Byrne, Newhouse, Sessions, Slaughter, and McGovern.

Mr. STIVERS. Good morning. I would like to call this subcommittee to order.

Welcome to the Subcommittee on Rules and Organization of the House. I am not a big fan of opening statements. I came here to listen to our witnesses, so I will be very brief in my opening statement and then turn it over to the ranking member, Ms. Slaughter.

This is the second hearing that this subcommittee has had this year. The first hearing we had was in April on rule XXI, you may remember. And today's hearing will encompass the entirety of the rules package for the next Congress, and it is a real opportunity for us to hear from Members for their suggestions of how we can improve the functions of the House under the rules of the House.

And so Members today will present testimony on a wide-ranging set of proposals that would change the rules of the House with regard to procedural motions, printing requirements for bill analysis, committee witness disclosures, subpoena authority, ethics training, et cetera. I am excited to hear from our Members about their proposals.

I look forward to hearing from each of the Members that are testifying, and we have gotten ideas from a lot of Members, and I look forward to the question and answer. I think that is going to be very robust and interesting to understand the proposals that are being brought forward by our membership from the bottom up. And I really look forward to that today, and thank you all for being here.

With that, I would like to turn it over to Ms. Slaughter. Thank you for being here.

Ms. SLAUGHTER. Thank you very much. I am happy to be here.

Mr. Chairman, the debate surrounding the rules that will govern the body of the next Congress may seem arcane to some, but they are incredibly important. This is our opportunity to help steer the

House of Representatives toward working better on behalf of the American people.

One of the most urgent issues facing our country today is the gun violence epidemic tearing apart our communities. The sad reality is that 91 people are killed by a gun every single day in America, and even sadder reality was not 6 months ago we were using the figure 30 a day. It has now risen to 91 a day.

Since the tragedy at Sandy Hook Elementary School nearly 4 years ago, there have been more than 1,270 mass shootings. A mass shooting is characterized by the FBI as three or four casualties. So those have happened nationwide. More than 34,000 people have lost their lives by someone using a gun since Sandy Hook—not since Sandy Hook, but in the recent time we have been keeping track.

It is startling to think about what the communities have faced over the past few months alone. And so the sit-in by the Democrat minority took place in June, and this summer alone, 2,015 people were killed by gun violence.

These aren't nameless, faceless tragedies, Mr. Chairman. They are our constituents, our family members, and even our colleagues. They are the people who elected us, who we represent that are being killed and injured at an alarming rate. As a result of this violence, Members of the House have stood more than 30 times since Sandy Hook to mark a moment of silence in response to a gun tragedy.

We are the people who can do something about gun violence. Standing up for a moment to recognize it doesn't really address the problem. When we took the oath of office, each of us promised to defend the Constitution against all enemies, foreign and domestic, yet the majority has failed to protect our communities from this carnage. The majority should decide today that it has stood for the last time without taking action. The leaders should start to do their jobs.

Far too many Members of the majority have consistently answered to the gun manufacturers and the gun lobby that represents them, preventing any legislative effort from moving forward. There hasn't been a single vote taken in the House to address gun violence since the tragedy at Sandy Hook. That is a disgrace, because I think everybody in America thought that the carnage of destroying the lives and shooting up of 20 elementary school children would be something that none of us could endure.

While this chamber has failed to act on gun violence, we found the time to take up legislation to whittle away at the Dodd-Frank financial reform law, which will help to protect Americans and prevent another great recession. In fact, just yesterday, the House Financial Services Committee reported out a highly partisan bill to kill Dodd-Frank. We have had an army of lobbyists up here since Dodd-Frank passed to do that very thing.

So these proposals and many others that we consider here are just one of the House bills that are taken up mostly to make a political statement in an election year. At the same time, we failed to take up legislation to address the skyrocketing cost of education or our crumbling infrastructure.

It is the responsibility of every Member of Congress to discuss the gun violence epidemic, the Zika epidemic, to fix them with legislation, to stop our country from being the only industrial country in the world that allows that type of bloodshed with guns. And that is why I hope we move forward with one particular idea we will hear about today, a rules change proposed by my friend, Representative Tony Cardenas. I am proud to be an original cosponsor of his resolution, along with Representatives Joe Crowley and Norma Torres. This straightforward proposal will require that every moment of silence carried out on the floor of the House related to a tragedy involving gun violence is followed by a committee hearing on the subject of the tragedy within 10 legislative days.

The Editorial Border, largest newspaper in my district, has already endorsed this proposal, writing, quote, "There is no reason for any congressional representative to say no to this resolution," end quote.

But this resolution alone won't solve the epidemic, but it is a way to start the kind of conversation and examination of gun violence that has been so sadly lacking under this leadership.

Mr. Chairman, this is what the American people expect and deserve. Think what it must be like now that every time your children leave the school, your spouse leaves for work, you leave the house to go to the grocery store, whatever you do, or to your work, that you might not come back home. They are—now, living under that kind of fear is totally unnecessary in the land of the free and the home of the brave.

So I look forward to hearing from my colleagues about their proposals to amend the rules of the House. And for the moment, I will yield back the balance of my time.

Mr. STIVERS. Thank you, Ms. Slaughter.

I would now like to recognize the first three Members to give testimony on their proposals. Mr. Griffith, Ms. Bordallo and—Bordallo, sorry, and Mr. Posey. Come on forward to the three seats. There are two microphones at the table, so you will have to share a little bit. I would ask you to try to be brief with the descriptions of your proposals and allow time for questions because we do have a lot of Members who have made proposals, and so I am sure that a lot of the information will come out in the question and answer. So please try to be brief, if you can, and summarize what you are doing and why you think it is a good idea, and then the members, I am sure will ask questions.

When you begin your testimony, please pull the microphone close to you so that people can hear it, and make sure the green light is turned on.

Without objection, any written materials you have will be inserted into the record. We welcome you and thank you all for being here. I will tell you that our great chairman, Pete Sessions, has a group of students in his office and he told me he will be here. He cares deeply about your proposals and wants to make this House work better, and he told me he will stop in just a minute. Here he is right now, the chairman of the full Rules Committee, our great chairman, Pete Sessions.

So with that, I will recognize each of you, and if you want to just go down the line, is that okay with you, Mr. Griffith, Ms. Bordallo,

and Mr. Posey. And again, please pull the mike close to you. Thank you. And let's go ahead and start with Mr. Griffith.

STATEMENT OF HON. MORGAN GRIFFITH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Mr. GRIFFITH. Thank you, Mr. Chairman. I appreciate it very much. I have submitted two proposals. The first one is restoration of the Holman rule. That is a big part of the hearing that we had earlier this year that you all were so kind, so I am presenting no additional information. I just didn't want folks to think I had forgotten about it or that I no longer cared.

The other one, I call it the Larsen rule. Representative Larsen was in here 2 years ago with this proposal. I thought maybe we could find something better. Nothing better has come up, and here is what the proposal says: All bills coming out of the Senate shall be treated under Senate rules. The concept being, then, the Senate would understand that when some relatively innocuous bill comes across, that we ought to take it up, debate it, and deal with it, as opposed to having it locked forever by virtue of a 60-vote rule. So what would happen in the House is you would have to have 60 percent of the House before you could ever take up a Senate bill. Hopefully, when they saw how ridiculous that was, they would then change their own rules.

I yield back.

Mr. STIVERS. Thank you.

Ms. Bordallo.

STATEMENT OF HON. MADELEINE BORDALLO, A DELEGATE IN CONGRESS FROM THE TERRITORY OF GUAM

Ms. BORDALLO. Thank you, Mr. Chairman, Ranking Member Slaughter, members of the committee. I request that the House rules be amended for the 115th Congress to permit the delegates and the resident commissioner to cast votes when we are debating amendments and legislation in the committee of the whole, same as was granted in the rules of the House of the 110th and 111th Congress.

Votes cast by Members of Congress make us accountable to our constituents and allow them to understand where we stand on important issues. The rules that were adopted by the 112th, 113th, and the 114th Congress denied voting rights for Members from the territories and the District of Columbia and continue to be—makes the House less responsive to the more than 4 million Americans who live in these districts.

Extending voting rights would be wholly symbolic. Our votes cannot change the outcome of legislation or amendments considered on the floor. However, these votes allow us to ensure that the needs of our constituents are addressed. Further, many of our Nation's men and women in uniform are residents of the territories in D.C., and these dedicated servicemembers sacrifice much of our country—much for our country and many have paid the ultimate sacrifice. In fact, the per capita death rate for servicemembers from the territories is higher than most States. Additionally, beyond high levels of military service, residents from the territories in D.C. contribute to and serve our Nation in all other aspects of American

life. Yet we, their representatives in Congress, are denied the very basic right to vote on matters that impact their very lives.

Mr. Chairman, permitting the delegates and the resident commissioner to cast votes in the committee of the whole will not lessen the representation of the 435 members. Rather, it would allow territories' voices to be heard more fully. It will give us parity with other Members and strengthen the long-cherished values of this body.

And I want to leave you, Mr. Chairman and Ranking Member, with something that one of my predecessors, Guam's former Republican Congressman and General Ben Blaz told me that when I was first elected to Congress in 2003, he said that as a delegate from a territory who could not vote on the floor of the House, and I quote, "I would be a Member of Congress, but not one of its Members." So I hope that this rule will be changed.

And thank you very much, Mr. Chairman, Ranking Member.

Mr. STIVERS. Mr. Posey.

STATEMENT OF BILL POSEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. POSEY. Thank you, Mr. Chairman and members, and I appreciate the fact that you are having these meetings to try and get information and ideas from the bottom up.

I am proposing what I proposed before, and that is, the House not consider any legislation that is not presented in comparative print. Almost every legislature in this country does that, many county commissions, many city commissions. You know, you get a piece of legislation before us and you don't know what is new or what is old, what is deleted, what is changed. You just start trying to read the whole thing, and you may be wasting a whole lot of time reading stuff that is already there.

So if we want to have a process that is actually Member-friendly, Member informative, transparent, good for the public, good for good public policy, and if you really care to be able to see what is in the legislation you are voting on, this is the proper course to take. We have proposed this before, and former speaker said it was too expensive before, said we were going to do it before, we don't need to have it in the rules, we are going to do it anyway. This is almost my—completion in my own State this year, and we are no closer to doing that than we were when I got here. The only way we are going to force this to get done, to stop treating Members like mushrooms, is to put it in the rules. Thank you.

Mr. STIVERS. Thank you all for being here. And I will open it up for questions, and I will start with, actually, Mr. Posey.

I was a State Senator for 6 years before I came here. The Ohio legislature uses comparative print, and I can tell you, I read the bills. In Congress, it is really hard to understand the bills in Congress sometimes because you don't understand what is changing and what is—and you can't see how things are changed. So comparative print, I think, is a great tool for Members that want to read bills and understand them.

The change that we have had since, I think, the last time that you proposed this is the House has gone paperless mostly. Won't that reduce the cost of this change?

Mr. POSEY. Absolutely. As your Ohio legislature did, most legislatures do, when you go paperless and you put it online or in electronic form, then you put the new language in green, underlined, and the stricken language in red, hash hyphen through. So very simple. It has got to be a savings of—you know, for every 100 hours you would spend reading bills, this would probably save you 96, 97 of them. I mean, you could take 100 hours of bill reading, reduce it to 3 hours, if you know you can go right to the changes, you know, you look for the changes.

You can—sometimes you would see it in Ohio, I know we have it in other States, you have a bill that thick. You could spend 2 days reading this thing line for line and still not know what was really changed.

Sometimes you will see there is only two changes in a bill that thick, and you can peel through there and look, oh, they have changed 18 to 21, they changed “shall” to “must,” or whatever the change is, but it is just—you know, it seems almost intentional to keep Members in the dark when you can’t have simple, simple Member friendly legislation presented and able to read like that.

Mr. STIVERS. Thank you. And speaking for myself, it would be a great—it would make it much easier to read bills. I think it is a fabulous idea. I appreciate you bringing it forward.

Ms. Bordallo, you already said this, but I want to make sure I understand it. You would give voting rights to the resident delegates, but they could not change the outcome—

Ms. BORDALLO. That is right.

Mr. STIVERS [continuing]. Of a vote?

Ms. BORDALLO. I think you can hear me. If the vote would be a tie on amendments, then they would vote again leaving us out.

Mr. STIVERS. Okay.

Ms. BORDALLO. So it makes no difference whatsoever. It is just the idea of being down in the floor with our colleagues.

Mr. STIVERS. Right.

Ms. BORDALLO. And then letting our constituents know how we stand on these issues.

Mr. STIVERS. Thank you.

And Mr. Griffith, I think your—your Larsen rule is intriguing because the rules in the Senate have changed in a way that are frustrating to many Members like me. It used to be that if you were in the Senate and you wanted to do a filibuster, you had to stand up and talk. Now they can do silent secret filibusters. The cloture rule is invoked everywhere almost, and it really is frustrating, and I understand that there are some protections on it.

There is nothing constitutional about the cloture rule in the Senate. It is a tradition, not a constitutional requirement, and I think it is ludicrous, and it does stop us from making a difference. So—but I have a couple of questions on how it would work.

If the House were to consider Senate legislation under the Senate rules, would the Senate rules have to be published in advance, or how would you handle that, because many of us are not as familiar with the Senate rules?

Mr. GRIFFITH. Well, they are already published, obviously, as a part of the Senate rules, and what you do is that you would just refer to those documents. Whenever a Senate bill came over, you

would refer under that. Look, I have got to believe there is a better way to deal with this situation, but seeing no better way and having heard Mr.-Larsen quite eloquently say 2 years ago this isn't a Democrat problem, it isn't a Republican problem, it is a Senate problem, that I thought, you know, we ought to at least have the discussion.

It would be a huge change. It would actually, for a short period of time, make things worse because it would also have the House not able to pass some of the legislation, just like the Senate can't. But it is one thing when it is somebody else's bill that is getting gored and when all of a sudden the Senate sees it is their bills that are being trampled by their own rules, I believe it would bring them to their senses.

Now, that being said, I would love for someone to come up with a better idea, another way to handle this problem, but it is a conflict between the House and the Senate, which is damaging to the Republic as a whole, and it is not a Democrat or Republican issue. It is a House-Senate issue.

Mr. STIVERS. It is a very provocative idea, and it is interesting and certainly would illustrate how difficult it is to get things done in the Senate.

Mr. GRIFFITH. Yeah. And if I might say, it is the—when you take the filibuster rule, the cloture rule, and the hold rule that the Senate have, and you put them all together, that tradition only dates back to the 1970s. It does not date back to the 1870s. It is a 1970s deal, and I must presume that they had some kind of a gentleman-gentlelady agreement because it wasn't really abused by either party until you get into the late 1990s, 2000, and then both parties have run amuck.

Mr. STIVERS. Thank you. Thank you all for being here.

I would now like to recognize Ms. Slaughter.

Ms. SLAUGHTER. Thank you, Mr. Stivers.

Very interesting ideas. Ms. Bordallo, I am sure you remember when we did have that rule.

Ms. BORDALLO. Yes.

Ms. SLAUGHTER. And it worked extremely well, and I supported it then and I support it again. It seems a terrible thing to ask a Member to come all the way from Guam and not really to be able to participate in a lot of things that we are doing. And I thought that it worked out very well. As you pointed out, if there is a tie, they revote and take the delegates out.

Ms. BORDALLO. Simply symbolic.

Ms. SLAUGHTER. Right, right. But an important symbol and you are here. I think we need to do that.

And Mr. Posey, I served in the State legislature as well, and we had, I think, one chairman when I was there who would never have anything more than a page-and-a-half because that is all he wanted to read. Somehow I think he managed to get his bills down to that. I am not sure everybody really approved of that notion, but it was his and he was proud of it.

And Mr. Griffith, you know, as long as I have been here, we have always had the sense that our problem is not Republican-Democrat, but our common enemy is the Senate. But I think it was set up to be that way. We have always been told that the Senate is

the cooling saucer for hot-headed legislation that comes to them from the House. It would be a little hard to, I think, to get that changed, but I appreciate the joke.

I yield back.

Mr. STIVERS. Thank you, Ms. Slaughter. I would now——

Mr. Byrne.

Mr. BYRNE. Yeah, I really appreciate Mr. Posey's suggestion. I was in the State Senate in Alabama, same thing, and I do think it is more than just saving us time. I think there is a real strong element of transparency here. So I appreciate your bringing it forward. I hope we adopt it.

Mr. Griffith, I don't want to get back into the very long discussion we had about your Holman rule, but I would like to make a request of you.

Mr. GRIFFITH. Sure.

Mr. BYRNE. If you would get with the staff to work out some of these things, and particularly give them examples of amendments that you cannot offer now that you would be able to offer if we adopted the rule as you proposed it. If you would do that, I think that would be helpful to our deliberations——

Mr. GRIFFITH. Sure.

Mr. BYRNE [continuing]. In coming up with something that would somehow get to the meat of the argument that we had back in April, which I really appreciate your bringing this forward.

You have done a great job of putting it all together. We had a very provocative discussion in April, but in order to follow up on that adequately, if you could get with the staff and if they would get with you and we could get some of that, that would be helpful.

Mr. GRIFFITH. Would love to do it. I have got lots of examples.

Mr. BYRNE. Thank you. Appreciate it.

Yield back.

Mr. STIVERS. Thank you, Mr. Byrne.

Seeing no other Democrats, Mr. Newhouse.

Mr. NEWHOUSE. Thank you, Mr. Chairman. I appreciate all three of you coming forward with some great ideas. They really are.

First of all, Mr. Posey, I have often lamented the fact that we don't do things like we do in the State legislatures in making it clearer what we are trying to do in effecting legislation.

It would make our job easier. It would make our staff's jobs a lot easier, but it would make members of the public tasks a lot easier to try to figure out what we are doing. And so I think it is a win win-win, I guess, if there is such a thing, so I think that is a great idea.

Ms. Bordallo—I think I pronounced your name correctly. We serve on Natural Resources together, so——

Ms. BORDALLO. That is correct.

Mr. NEWHOUSE [continuing]. I appreciate having you here today. This is an interesting idea that you brought forward. I have often wondered that myself, why territories don't—are not allowed to vote. Although, you do have voting privileges in committee, correct?

Ms. BORDALLO. In committee, that is correct.

Mr. NEWHOUSE. So if you are asking for a symbolic vote on the floor, I am not sure how that gives you parity, if you could help

me understand that. If it is only symbolic, that is still, you are not—

Ms. BORDALLO. That is correct.

Mr. NEWHOUSE [continuing]. Not quite there. And you do have the opportunity to express your opinions clearly in committee, so that—if your—

Ms. BORDALLO. Absolutely.

Mr. NEWHOUSE [continuing]. Complaint is that you can't express how you feel on issues to your constituents, there is an opportunity there.

Ms. BORDALLO. I guess in answer to you, Mr. Newhouse, is the fact that, you know, you are elected to a body.

Mr. NEWHOUSE. Yeah.

Ms. BORDALLO. And you are not allowed to vote on the floor at all. We don't vote for final passage. That is even a disparity, in my opinion. But to not be able to go down and vote when there is a committee of the whole, it is a matter of just going down on the floor and meeting our colleagues once in awhile. You know, I am very seldom down on the floor because we don't have a vote, the committee of the whole or final passage. So I think it is just a matter of—to being—belonging to a family.

Mr. NEWHOUSE. Sure. And I get that.

Ms. BORDALLO. A whole family.

Mr. NEWHOUSE. I understand that, and I appreciate that. And then your comment that it would not—I think I can't recall exactly, would not affect the outcome or would be—

Ms. BORDALLO. No, not anything—

Mr. NEWHOUSE. So only in the event of a tie would those votes then be discounted?

Ms. BORDALLO. That is right.

Mr. NEWHOUSE. What if it was a margin of one or two?

Ms. BORDALLO. Well, whatever. If there is a margin of one, I think they go back and vote again.

Mr. NEWHOUSE. Or the total of the number of delegates—

Ms. BORDALLO. Would be left out.

Mr. NEWHOUSE. I see. Okay. Okay. That is an interesting concept. I haven't made my mind up on it yet, I just—but I appreciate you bringing it forward and allowing us to consider.

Ms. SLAUGHTER. Would the gentleman yield?

Mr. NEWHOUSE. Sure, absolutely.

Ms. SLAUGHTER. I do want to say that for about 10 years that was commonplace for that to happen.

Ms. BORDALLO. Yes.

Ms. SLAUGHTER. Thank you, Dan.

Without any upset to anybody or it seemed to work pretty well, at least I don't recall ever hearing any complaints about it.

Mr. NEWHOUSE. Oh, okay.

Ms. BORDALLO. Yes.

Ms. SLAUGHTER. And it did make—it did make people who had come a great distance to get here really feel like a part of what was going on.

Ms. BORDALLO. And then most important too is our constituents don't know where we stand because our votes are never publicized

or whatever, you know. We may be on the bill as a cosponsor, but—

Mr. NEWHOUSE. Aren't committee votes publicized?

Ms. BORDALLO. Well, yes, they are, yes. But, you know, in every aspect. I am on Defense and I am on Natural Resources, but what about all the other, the Health and Education Committees and so forth, so—

Mr. NEWHOUSE. Good point. Good point. I appreciate that. Well, like I said, it is an interesting idea, and I appreciate having a conversation.

Ms. BORDALLO. And we did have it in two Congresses, we did have the right to vote, but it was taken away then when the parties changed.

Mr. NEWHOUSE. Well, thank you for bringing the idea forward.

Ms. BORDALLO. You are welcome.

Mr. NEWHOUSE. Mr. Griffith, you always come forward with interesting great ideas. The one thought that occurred to me, though, we all complain about the Senate, right, and I guess that is a part of the—just the natural dynamic. But the one thing we complain about most is the 60-vote margin.

So it seems to me that—I guess I get that. I get where you want to get back at them, get them to change their rule, bring it more so that we can get our things passed through the Senate more easily. But it seems to me like we would be doing exactly the same thing that we complain about all the time by putting in their rules into our House. And so tell me how that makes sense.

Mr. GRIFFITH. And the concept would be—I mean, and Chairman Stivers touched on this, is that the historical filibuster rule was—it actually had a higher threshold at one point at 67 to stop it.

Mr. NEWHOUSE. Yeah, right.

Mr. GRIFFITH. But you had to be live on the floor, either you or a series of people making your case to the American people. What happens now is they put in this—with the combination of the three, the filibuster, the cloture, and the hold rule, they can effectively not take up a piece of legislation. But instead of standing on the floor explaining to the American people why it is they feel like this is a piece of legislation that should not be voted on or why it is something that is bad, they can go home and do whatever they want to do at home, they can go to a fundraiser, they can go have a nice steak dinner at Charlie Palmer's, and so there is no pressure.

What you found with the historical filibuster rule, which did slow things down, but it gave time for people to think about it and listen to the complaints. What happened then was you had people who, A, were very passionate. It didn't happen on your regular bills. It only happened in the hot button issues. And after several days, worstcase scenario, either one side got tired or the other side figured out, these people have a point, and they would work out their differences. And the process did not come to a complete halt.

Now, you are absolutely right, we would be bringing those what I consider to be defective rules, and contrary to the principles of American democracy in a Republican forum, we would—they are contrary to that. We would be bringing those into our House, but my belief is it would be for just a short period of time, because once

the Senators had some great idea that 90 out of 100 voted for it and sent it over here, and a couple of us said, no, we are putting a secret hold, you won't even know which one of us is putting a secret hold on it, and you have got to get 60-percent of the House to support taking it up, I think they would understand the frustration, and it would be a good lesson.

Now, that being said, there has got to be a better way. I recognize there has got to be a better way, but I haven't figured it out. So I put this in so that folks would think about it, come up with a discussion, and maybe we can come up with a plan to let the Senate know that, you know, there may be some things that that is what they want to do on, but when it becomes every bill you send over there becomes a struggle with that rule, it is truly damaging the American Republic.

And I feel a little bit dangerous in saying this, but for the historians out there, this—the way the Senate is operating is actually akin, it is not identical, but it is akin to Calhoun's steering of the majority theory, which he proposed in order to protect slavery.

Now, we are not facing that issue today, thank God, but there are issues of the day that can be jammed up by folks who are operating with secret holds and then requiring a super majority to get something out. No government teacher teaches the kids that in school, that it takes 60 percent to pass a bill, but that is what is happening now, and one body is holding up the entire process. And so we have got to figure out—I think, as a House, we have to figure out a solution. This is—I recognize this is a flawed solution. But without any solution being placed on the table, we will never have a discussion, so I put it in.

Mr. NEWHOUSE. Yeah, right, right. And I don't disagree that giving them a taste of their own medicine might help, although many members of the Senate are former House members too, so they should understand. Something happens to a person's memory when they walk across the way. But I appreciate you bringing it up for discussion.

As far as the Holman rule, it also has a long history in Congress, one that I haven't done a lot of research on, but it goes back into the 1800s. Is there anything in particular that you are looking for as far as programs or changes to benefits being provided to any beneficiaries? Is there anything that you are trying to zero in on or is it just a—

Mr. GRIFFITH. Well, it is a general frustration that I have had since coming here 6 years ago, that there are things that you can't really get to because it is mandatory spending. And when I—

Mr. NEWHOUSE. Yeah.

Mr. GRIFFITH [continuing]. Burrowed down to find out what the problem was, it is our own Rule XXI. And so if you change XXI (2)(b) and (c), it is still going to be rare. There are going to be times when there is probably a rule that waives those rules, and I understand that, but to be able to at least offer.

And the one that first brought it to my attention was I saw us spending \$70 million on the wild horses program. And while there may be some benefit in that program, I can tell you that is a lot of money to be spending on 50,000 wild horses to have a retirement home out West when we have needs with children with disabilities,

and lots—and anybody can pick out their favorite need, but \$70 million would solve a lot of the other issues that we have. Not all of them, but there is a fair number of issues you could pick off the table and say here is your funding if you could get to that \$70 million. But believe it or not, the retirement homes for wild horses is mandatory spending.

And I have submitted previously to the committee a list of all the different things that are mandatory spending. So most people here, you know, when they hear mandatory spending, they think about the big projects, Social Security, et cetera, those types of—Medicare, and they are right. But there is a lot of other programs that we could be looking at and trying to decide whether or not we should actually be funding them and using our power of the purse, which we cannot do.

And the rule was created in 1983 to keep Reagan Republicans and Blue Dog Democrats from cutting spending. And so it was not created to solve a problem other than crazy Republicans trying to control the budget.

Mr. NEWHOUSE. That is good to see some things never change, right?

Mr. GRIFFITH. Yes, sir.

Mr. NEWHOUSE. Well, again, you always bring good ideas to the front, so I appreciate that, all of you, your ideas today. And I yield back my time.

Mr. STIVERS. Thank you.

Now I would like to recognize the great chairman of our full committee, our chairman, Pete Sessions.

Mr. SESSIONS. Mr. Chairman, thank you very much. And I want to first thank each of you for being here. I also want to thank Louise Slaughter. Louise Slaughter has taken her time to be here as the ranking member. And Louise, thank you for doing this.

Louise had the opportunity, when she served as chairman, to sit through and try and make wise determinations. Each of you three, in fact, have brought pretty good ideas to us today. I will go to Mr. Posey first.

Mr. Posey, I don't presume to know everything about it, meaning the process, but we have a very intricate process and overloaded system. We have an overloaded legislative counsel who does all these matters. We have, all of a sudden, a bill that comes up and 113 people decide to rush leg counsel and to get things done and for them to determine what they are doing.

I think that there is probably two things that I have as a goal of being the chairman of the committee, and both have eluded me thus far. The other one is how we can change the jurisdictional elements as it relates to homeland security. The jurisdiction is in a broad group of people, and we just have not gotten our hands around that.

I would like to tell you what we told you 4 years ago or 6 years ago, it is a work in progress. We are trying to get at it, and we have made an incredible number of changes as it relates to the Government Printing Office, as it relates to getting bills done where they actually are able to substantively identify things. And I think that if I were going to be forthright with you, I should accept the challenge to say, how about in just the major bills that

come out of committee, if not the amendments that come, and we have got to understand more about this.

This happened to me yesterday. The committee knows that I was speaking with a Member, and I actually talked with him about the changes that he proposed and where they were all in line with what he said they were doing with the actual legislation. And it is not easy for Rules Committee members to actually see these delineations also.

So what I am going to promise you is I am going to dive, not back into that issue, but to see where we are going on that progress. I think if there is one thing that I should stand for, it is trying to make the process better. You have been nothing but kind to me. Katy even still talks to me despite me not getting this done, but I want you to know it is not an effort that has been—that we have thrown away. We just can't get at it yet with the volume of work and then having the money to do it.

I think everybody knows that we are operating off old dollars from years back, and we have invested that money in people instead of technology. And everybody is under that same strain. And so I will promise you that when I see you, that I need to have a better response. And I want to thank you for having the—really the sincerity to come up here and offer ideas as opposed to saying: Look, guys, I am sick and tired of this. I have asked you before. So I want to—

Mr. POSEY. I do that too, Mr. Chairman.

Mr. SESSIONS. Well, you have been very gracious, but some elements have eluded us.

Secondly, I want to say that the issues that you bring forth about the voting of delegates might be somewhat of a new issue to some of our new Members. It is not to older Members who have been here. There are a number of systematic reasons we could get into whether we should have—D.C. should have people that vote, whether they should have a United States Senator, and there are some bit of us that have tended to look at the Constitution in these matters.

And I want you to know I am delighted that you are here, and bringing the issue up is important. I am not promising any change this time, but you are ensuring that there will be a discussion. And I think, from that perspective, you would not consider that a victory but that we do recognize what we are doing and we probably need to get better at it.

Yes, ma'am.

Ms. BORDALLO. Mr. Chairman, I just want to make it very clear that, you know, although we wish we could have final vote—final vote on the passage of bills, but we are just asking for this committee as a whole vote. And I understand it has been through various courts and it has come out affirmatively, so I just want you to know that there has been some background done on this. And as I said, it is just a symbolic vote, and we represent 4 million American citizens.

Mr. SESSIONS. Yes, ma'am. But you don't come from States.

Ms. BORDALLO. Well, I guess you can say that.

Mr. SESSIONS. I guess I could. And a body—Mr. Griffith is here arguing really a great—not only a great argument but a great come

back. And I think that perhaps Mr. Newhouse said it best when he said, you know, what is good for the goose is good for the gander. But in fact, a body, a body, a United States Senate or United States House is entitled, under the law, to set its own rules and to establish therein how it will operate under a constitutional perspective.

I simply wanted—not trying to be nasty—will recognize, I am glad you are here, I am glad you are bringing this issue, but there is some bit of disagreement about how the votes will take place here, and we do see it differently. Louise sees it differently, and she had an opportunity when they held the body to do that, and yet you are speaking respectfully to two Members, and I think it updates our new Members and it will be a discussion. And we will have to consider this. And I would like to say that we have a Republican, at least one Republican—

Ms. BORDALLO. Yes, we do.

Mr. SESSIONS [continuing]. In that perspective also who was—
Ms. BORDALLO. I thought that would help.

Mr. SESSIONS [continuing]. Most gracious and genuine when she approached me as chairman of the committee some 2 years ago. So I acknowledge that, but there is a philosophy behind it.

Mr. Griffith, what you have done here is most intriguing. It has also been said you want us to do what you don't like them doing. We would do the same, we will treat you the same way you treat us. I would suggest to you—and I know we have got an 11 o'clock meeting with each other about that, or at least I think we do, where you are going to bring this and other ideas to me. I would simply say this: I believe, in some respects, except for the rules of the Senate as they apply necessarily to legislation about whether it is considered permanent or whether it is considered under a 10-year reauthorization, we really, I think, fall to the right value, and that is, we have a vote on the rule on the floor where 50 percent of people do get a chance to fully express themselves. We do pass legislation that exceeds the 60 vote threshold.

Because our body is larger, that 60-percent becomes almost inconsequential if it were related to whether we would move a bill forward. In other words, whether you are going to get cloture or not. But in some respects, this body has chosen to have the rules that it does, and our fine young chairman now—that is why we are entertaining these ideas and notions, but what I would suggest to you is, it is worthy of some bit of understanding, but we find ourselves on a regular basis, as we have up at the Rules Committee, where certain parts of what the Senate has passed were done with 60 votes, which made it permanent law.

What does permanent law mean? Permanent law means it has no ending date until another set of changes where 60 votes overturn that law. And I just think that for us to apply that rule, which I deeply disagree with, could have some implications downstream of permanent law in this country, up to and including, what happens when we did our—when we were in the minority and we got an \$870 billion stimulus package that could have gotten 60 votes and become permanent law and they could have just done what they chose.

I think it binds us different when we operate the way that we do, so I admire you for what you got. I want to learn more from you. There has been no Member of this body that has sat in—except the Rules Committee, that sat in Rules Committee meetings other than yourself. And I think you are thoughtful, and I admire you for it. I am interested in exploring more about it. But my observations as an insider that has done this for 20 years is: I think we live up to most of what you would want anyway. But I think it is still an interesting concept, so I guess we entertain each other a lot up here.

I yield back my time.

Mr. GRIFFITH. I appreciate your comments, Mr. Chairman, and it was put in as a place holder, just to have a discussion about what do we do about this. Because I do see that, even if the Senate doesn't, I see what they are doing in their rules, which is, as you pointed out, they have a right to do as a body, but what they are doing, I believe, is damaging the Republic. The main cause of why the American public is dissatisfied with the legislative branch as a whole, because they don't see us getting things done, and yet our House has produced a lot of bills, and we have passed more bills off the floor than historically during this same 2-year period has been done in this Congress, but they just go over and languish in the Senate because there is a secret hold with a requirement for a cloture vote and a filibuster, and you end up with no action whatsoever.

So I do appreciate your comments, and as I said to Mr. Newhouse, I recognize this is a flawed suggestion, but I thought we ought to have a discussion.

Mr. SESSIONS. Yes, sir.

Mr. STIVERS. Thank you, Mr. Chairman. Thank you to all three Members of the panel.

I do have two things to read into the record. First from John Culberson, a letter which explains a proposal that he has. I would like that read into the record and submitted for the record.

[The statement of Mr. Culberson can be found in the Appendix as Insert 1A-1]

Mr. STIVERS. And second, our great chairman, Pete Sessions, asked legislative counsel to review the Ramseyer rule and recommend changes of how the rule can be revised to accomplish the goal of transparency that Mr. Posey has. And I want to make sure we get you a copy of what leg counsel has said, but I would also like that submitted into the record without objection.

Without objection, those will be entered into the record.

[The statement of Mr. Sessions can be found in the Appendix as Insert 1A-2]

Mr. STIVERS. The next—thank you for being here.

And we are going to have the next panel, and I believe Mrs. Radewagen had stepped into the hall. Is she still out there? Can somebody check?

So I would like Mr. Rooney, Mr. Cárdenas, and maybe Mrs. Radewagen, if she is still out in the hall. She is not there.

So I will have—we will have Mr. Rooney and Mr. Cárdenas here for the second panel. Again, there are two microphones at the table, so now there are two of you so that should not be very hard.

Please pull the microphone close to you and make sure the green light is turned on so that the cameras and everybody in the room can hear you.

Without objection, any written materials you have will be inserted into the record, and we welcome your comments. And thank you both for being here, and thank you for your very thoughtful proposals to change the House rules in the next Congress.

If it is okay, we will just go from that direction over, and we will start with Mr. Rooney.

**STATEMENT OF HON. THOMAS ROONEY, A REPRESENTATIVE
FROM THE STATE OF FLORIDA**

Mr. ROONEY. Thank you, Mr. Chairman. There we go.

So members of the committee, I would like to ask you what do the following things have in common? The Louisville Lake Dike repair, the Buckeye Lake dam repair, the dredging of the Rochester Harbor, or the Herbert Hoover Dike repair. These are all Army Corps of Engineer projects that we have in our districts. I couldn't find one in yours, Mr. Newhouse, so I will keep digging. We all do.

And I have a bill called H. Res. 813, which is being amended for the House rules to exclude existing or proposed water resources development projects of the Army Corps from the definition of our congressional earmark ban. And the reason I do this is very simple.

I have been in Congress now for four terms, going into my fifth term. Some here have been shorter, some longer. One thing that I have noticed since we have instilled this ban is that our constituents are getting more and more frustrated over our inability to do our constitutionally mandated job, which is to deliver and to govern and to problem solve when they pay their Federal taxes to us, and then they ask us, as Members of Congress, to address these issues for them.

And our only recourse now is to basically write a strongly worded letter to the Army Corps asking that they perform a duty for us in our own districts. It kind of feels like a hollow exercise that we are essentially reduced to being cheerleaders for our constituents rather than governing and problem solvers.

The other difference in this resolution, slash, rules proposal change is that unlike a lot of the other reasons we have the earmark ban, which there was improprieties, there is bad actors, there were bad earmarks, and then we came up with this earmark ban, and we had some solutions with being able to apply for competitive grants. There are no such competitive grants for Army Corps of Engineer projects. You either get them or you don't.

And when I first got elected in 2008, we could direct the Army Corps in our district to do certain projects that we felt were important and a priority.

So when we did the earmark ban, all we could do thereafter was write these strongly worded letters. We go back to our constituents, we go back to our community leaders, and where they used to appreciate what we did for them, now they just have this look of disappointment. It is the disappointment that we all feel as Members of Congress when people see our inability to get things done and why Congress' approval rating is so low.

And why do we do this? The only reason that I can think of is because it looks good politically that we say we don't do earmarks. The problem with that is, is that we don't spend any less money. We just punted our obligation of the power of the purse to the administration. They still spend that money. The Army Corps still does projects, but they prioritize what they want to do, not us.

So we can't do anything for our own constituents that pay Federal tax dollars and expect us to get things done for them. So this rule change basically is just to say: Let us do our jobs again. At least with regard to the Army Corps of Engineer projects, let us be able to go home to our constituents and our people and say: What is important to you I will get that done, if I feel like it is the right thing to do, rather than just begging the administrative branch to do it for us.

And ladies and gentlemen of the committee, I thank you for your time. I thank you for your consideration. I know that this is a political issue, but we have got to move on, and we have got to be able to start getting things done for our constituents, especially in a divided government like we have. This is something that Democrats and Republicans alike should be able to come together so we can do our jobs and feel good about doing our jobs again because we are getting things done for our constituents.

Thank you, Mr. Chairman. I yield back.

Mr. STIVERS. Thank you very much.

Mr. Cárdenas, go ahead.

STATEMENT OF TONY CÁRDENAS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. CÁRDENAS. Thank you very much. I appreciate this opportunity. And thank you for introducing that rule change. I love it. I used to be local government where they don't call them earmarks. They just say you are taking care of your constituents.

Mr. ROONEY. Yeah. Yeah.

Mr. CÁRDENAS. So thank you.

Thank you members of the Subcommittee on Rules, young Chairman Stivers, as my colleague, Mr. Sessions, referred to you, and young Ranking Member Slaughter.

Ms. SLAUGHTER. Hardly.

Mr. CÁRDENAS. Good morning everybody. Thank you for allowing me to speak to you on this rule change today. My proposed change to the Rules of the House would amend rule Number XI by adding the clause titled, "Hearings Related to Moments of Silence." This clause would require that every moment of silence observed by the House floor, because of a gun violence tragedy domestically here in the United States, would be followed by a hearing within 10 legislative days of that moment of silence on the House floor. The Speaker of the House would designate the appropriate committee or subcommittee to carry out the hearing. The hearing would have to be about the gun violence tragedy that the moment of silence was observed for.

Again and again we have stood in silence on the House floor remembering the victims of mass shootings, remembering and honoring victims from all across our country. All of these moments of silence have at least one thing in common. They were not followed

by meaningful legislative action or hearings by this House. We are tired of not having an answer for our constituents when they ask us what we have done to cut down on the number of mass shootings or to make the process for buying a gun safer.

I introduced this rule change as a resolution, House Resolution 694, on April 20, which is the 17th anniversary of the Columbine shooting that shocked our Nation. This resolution now has 141 co-sponsors. There have been at least 31 moments of silence related to gun violence observed on the House floor since the shooting at Sandy Hook Elementary School. That is an average of eight moments of silence a year since the Sandy Hook shooting.

This rule change would require legislation or—it would not require legislation or even draft legislation. Just an honest, open, transparent discussion about public safety and how to best protect the American people, a hearing of the House of Congress, just a hearing so we can find out what happened and what we can do to stop something like it from happening again.

I would be misstating the reason for me introducing this resolution if I just said it was out of frustration, but I introduce this because on any average day in the United States of America, 89 people die due to gun violence. On average, every day, 31 people are killed by someone using a gun, 55 people commit suicide every day, 2 people are killed unintentionally, and at least 1 person is killed by police intervention.

What that breaks down to, ladies and gentlemen, over an annual basis is 32,500 people die as a result of gun violence every year in the United States of America. 11,294 people are murdered, 19,992 people killed themselves, 561 people are killed unintentionally, 414 are killed by police intervention, and 254 die, but the intent is not known.

In addition to that, of the people who die every year, 75,962 people are shot and survive due to gun violence, 55,009 people are injured in an attack, 3,791 people survived a suicide attempt, 16,334 people are shot unintentionally, and 827 people are shot by police intervention.

Those are some of the things that turn out in statistics, but behind every single one of those incidents are families and communities that are left in anguish and wondering why Congress is doing nothing about it. Thank you.

Mr. STIVERS. Do you yield back, sir?

Mr. CÁRDENAS. Yes, I yield back. Thank you.

Mr. STIVERS. Thank you both for being here. Thanks for your proposals and your testimony.

Mr. Rooney, I find your idea particularly thought provoking and engaging. Tell me—obviously under Article I, section 8 of the Constitution, we are the ones responsible to appropriate money. But tell me, would this increase spending by even a dollar or would it just have us do our job to direct the spending as we so believe?

Mr. ROONEY. Absolutely not. I mean, that is one of the great myths of the earmark ban that, you know, is perpetrated that somehow that there has been a reduction in the amount of the pie that is spent because we don't do earmarks. There is no reduction. It is the same. It is just we don't control how the money is spent, which goes exactly to what you say under Article I that our respon-

sibility on Ways and Means is tax and on Appropriations is to spend the dollars that our constituents send us. So there is no increase in spending. It is only who gets to decide where that money is spent.

Mr. STIVERS. Thank you. I think that is a very important point to make, but thank you for your thoughtful idea. I have no further questions.

Ms. Slaughter.

Ms. SLAUGHTER. Boy, I do. Mr. Rooney, thank you.

Mr. ROONEY. Thank you, Madam Chair.

Ms. SLAUGHTER. I used to represent a small town on Lake Ontario, about a few thousand people, when fishing was so wonderful, but they didn't have—they couldn't possibly bond for water sewage systems. And we were able to put a little money together here in an earmark so that they could build an economy, for goodness sake. Every earmark we ever did was a request by a municipality. We signed a letter saying that we had no financial interest of any sort in it, and as you point out, we were simply doing what our constituents excepted us to do, step in when there was something there was no other answer for.

And I have deplored that loss so much. And as you pointed out, keeping the Port of Rochester dredged is no small item that we have to beg for practically on our hands and knees every year.

I thought doing away with the earmarks, which really is what was pointed out, wasn't anything that benefited any of us personally in any way. We were simply doing what our governments were asking us to do that they couldn't do by themselves. I wish to goodness that that would happen, and I thank you very much for bringing that up.

Mr. Cárdenas, of course, I am the cosponsor of your resolution.

Mr. CÁRDENAS. Thank you.

Ms. SLAUGHTER. I think very much about it. I wanted to talk about—awhile ago when I first made my introductory speech, I mentioned 34,000 people being killed since Sandy Hook seems kind of surprising to me, but that is the actual number. And we have done those 31 remembrance of silence that—sometimes two and three a month, and it is almost a meaningless thing if those of us who were standing at moment of silence, are the very same people who could do something about it. It simply does not let us off the hook that we say we are really sorry it happened if we don't try to make sure it doesn't happen all the time in the country.

You remember that all we all said about how important it was when we did the background checks and that people who were mentally ill were not going to be able to get those kinds of weapons, but yet every time we have something like Sandy Hook, Aurora, those persons and perpetrators have always found being in some direction or other mentally impaired. So whatever we are supposed to be doing there isn't working, and that may be because we don't do gun shows and people can order them or buy them from each other.

It is—what we are doing is obviously not working. But I find that for me, as a Member of this Congress, that the fact that we can't even address it is very sad, and I hope we can change that.

Mr. Stivers, thank you very much.

If you will excuse me, I have got to go meet the president of Rochester, and then be right back.

Mr. STIVERS. Sounds like a very important constituent. All right. No problem. I know Mr. McGovern is on his way.

I would like to recognize the distinguished member from Alabama, Mr. Byrne.

Mr. BYRNE. Yeah, Mr. Rooney, I appreciate your amendment. I think it raises a very important issue that we need to discuss. It always perplexes me why we would rather have unelected government bureaucrats make decisions about how we spend money in our districts rather than the people that were elected by the people of the United States. So I appreciate your bringing this to the floor.

You brought a rightful focus on the Corps of Engineers, and I am sorry I missed your testimony. I was at another committee meeting voting or supposedly voting.

Why did you limit it just to the Corps of Engineers? Was there some particular purpose?

Mr. ROONEY. I think it was just built up frustration over the years as an appropriator, but also because it is the one thing that we can sort of argue, I think, with even more confidence that because there are no competitive grants that you can sort of like gear people that are looking for those Federal dollars for, there is no Federal grants that they can apply for, they really are just at the mercy of how the administration wants to spend that money with no input from us and no input from like the competitive grant process, whoever has the best application, I guess you would say.

So to me, this just seemed like the easiest sort of toe in the water for us to be able to say, okay, we are not doing earmarks, I get that, but at least, you know, there is competitive grants. But where there is no competitive grants with regard to Army Corps projects, there is really no other recourse for us other than to write a letter to the administration begging them that this is really important to us back home. And they can tell us, you know, to take a hike if they want to, and they do a lot, especially in my district, it feels like.

Mr. ROONEY. So this just takes that power back to what I think the Founding Fathers originally wanted us to have, to be able to represent our people and govern and solve problems.

Mr. BYRNE. That really gets to the other question I was going to ask you. It sounds to me like one of the bases for your assertion of this is that you are reasserting the prerogatives under Article I of the Constitution on behalf of the legislative branch, which we have essentially given away to the Article II executive branch.

Mr. ROONEY. That is right. And obviously, as an appropriator, I would like to, as Ms. Slaughter said, have the opportunity to revisit, at least when it comes to municipalities or other taxpaying entities. I understand that there were, again, as I testified, bad actors in the earmarks time, but we cut off everything. But we didn't reduce spending, which is this great myth out there, that somehow because we don't do earmarks there is less spending. There is not.

So we basically just sacrificed our constitutional duty to allocate those dollars to the administrative branch and perpetrating, I guess, this myth to the public that we don't do earmarks, aren't we

great? It is like, no, we are not great. It just adds to the dysfunction that this Congress feels every time we go home.

I remember when I was first elected, as I said, that we had earmarks, my constituents were actually glad to see me when I went home. And that is one of the frustrating things, is that you feel like you have nothing for them when you go back.

And so this is just one of those things that I think that is our obligation, it is our duty. There is no other way for people to be able to apply for grants in this situation. So if we are not going to do earmarks right now, fine, but at least let's look at Army Corps of Engineer projects, because there is no other way for them to be able to use their Member of Congress to get those projects complete.

Mr. BYRNE. Well, I appreciate your bringing this forward, because at the very least it gets us talking about this issue and having a more well-reasoned position on it, however we come out. And I am not sure where I stand on it myself.

But I really appreciate you bringing it up. Thank you.

Mr. ROONEY. Thank you, sir.

Mr. BYRNE. I yield back.

Mr. STIVERS. Thank you.

Mr. Newhouse.

Mr. NEWHOUSE. Thank you, Mr. Chairman.

I appreciate both of you coming forward this morning with some good ideas.

So just in the order of your appearance, Mr. Rooney, I am from the West. We have been experiencing tremendous periods of drought in the West. Mr. Cárdenas understands that as well. Mr. Nunes is in the room. So we have been very frustrated getting the proper authorization to move forward on projects that would improve water storage, water availability. So I certainly applaud your efforts in this regard to help move those projects forward with the Army Corps.

Would you be open to including the Bureau of Reclamation in this idea to help ameliorate some of the problems that we see with surface water projects moving forward in the West?

Mr. ROONEY. Yes, sir. It is interesting. Since I proposed this bill and got, I think, over 20 cosponsors now from both sides of the aisle, I think evenly split, I have had many Members come up to me asking if I would be open to adding certain things like that to it. And you can tell that there is obviously good justification for all the ideas that would be added onto it.

Again, the reason why I just limited it to this is because I felt like if we kept adding stuff, there are a lot of things that you can justifiably keep adding to it, but that I maybe risk it losing its kind of strength in its simplicity, so to speak.

But me personally? Absolutely. But I think that first things first. And if we can at least convince our colleagues that we should be able to dictate what Army Corps projects are a priority in our own districts, then we can move on to those other issues.

Mr. NEWHOUSE. Like I say, I appreciate the thought.

You did bring up, I believe, the Corps' Chief of Engineers recommending something like 28 projects, and that had a total price tag

of, I think, about \$5 billion, which is several billion dollars more than their current funding level.

So in reference, sir, to the questions from Mr. Stivers, and you have made several points that this would not increase spending, could you address how we would make up that difference in funding levels?

Mr. ROONEY. From what I understand of the Energy and Water appropriations bills, that the funding projects would not break the budget caps that we have. It would simply ensure that Members have control over what the existent levels are. So I am not really sure where you are getting your funding level that you just cited. I will find out and get back to you to make sure that we are on the same page.

Mr. NEWHOUSE. Okay.

Mr. ROONEY. But we specifically crafted this that there would be nowhere outside of what the existing appropriations level would be moving forward. But to be sure, I will get my staff to get back to you on that.

Mr. NEWHOUSE. Well, it comes from your white paper on the bill itself.

Mr. ROONEY. Okay.

Mr. NEWHOUSE. So we will get together and talk about that later.

Mr. ROONEY. Yeah. Okay.

Mr. NEWHOUSE. Just so I am clear about the increased level and we are able to deal with that. Certainly I agree with Mr. Byrne, it seems like we have abdicated much of our responsibility to the executive branch. There are certainly arguments to be made for the fact that we represent areas of the country, we should know from our constituents the needs better than the executive branch because that is our neighborhoods and we get the input directly from our constituents. So I appreciate the thought that you bring forward.

Mr. Cárdenas, I appreciate your bringing forward this very important issue. I understand your frustration that you share with many Members of the Congress. And I guess I have some question about if this is the right path to take. So I want you to help me understand. Certainly I see moments of silence that we take as a body, and I agree there is way too many, but they are meant to honor or to mourn or pay tribute to individuals. And I think it is a tremendously important time for us as a body to gain unity as a group. So they are important things for us too as well as we go through this exercise.

Having a requirement that a hearing is held within 10 days, though, poses some interesting, I think, perhaps conflicts that maybe you could help me with. A lot of times police investigations last much longer than 10 days. So we wouldn't have complete facts or the story of what is happening. Perhaps an investigation at our level I am not sure would be as effective as it could be.

So could you help me understand how we would not interfere with an ongoing police investigation if that was a requirement for such a short period of time to hold one.

Mr. CÁRDENAS. Sure. Thank you. That is a great question. And to your first point of the moments of silence, my resolution here

would not preclude us from having moments of silence. As a matter of fact, what it would do is it would only be triggered if in fact we have a moment of silence on the floor. So it wouldn't impede our ability or our need to have a moment of silence to show our solidarity with the communities that have been afflicted by such a tragedy.

Secondly, to your question about how it would or wouldn't interfere with an investigation and/or if an investigation hadn't got enough facts out, I can tell you this, when we have a moment of silence on the floor 99 percent of the time there has been tremendous national coverage on the matter, there have been statements by the local authorities, and it tends to enlist the involvement of the national authorities as well.

When you look at Sandy Hook, for example, much information had already been in the public within 2, 3, 4 days. So when I talk about 10 legislative days, we could be talking about having a hearing 3 weeks later. Say we have a break between those legislative days, we could have a hearing as late as a month, even 2 months later.

So I picked 10 legislative days as a compromise in my mind to while it is still fresh in our minds, yet at the same time it gives enough time for us and the Speaker to go ahead and deliberate as to which committee or subcommittee would in fact have the hearing. But most importantly, it would give us, as the most collective legislative body in the country, to actually speak to the issue and the tragedy that was of such a height that we actually had a moment of silence on the floor of the Congress.

So to me the 10 legislative days is enough time for us to have gleaned information on that and for us to call forth experts to educate us and to apprise us as to what perhaps contributed to such a tragedy.

Mr. NEWHOUSE. Yeah, I guess I hadn't thought about the possibility it could be several weeks or months.

Mr. CÁRDENAS. Yeah. It is legislative days, not calendar.

Mr. NEWHOUSE. Yeah. But it could be just a matter of less than 2 weeks too, depending on when it occurred. And so I guess that is my concern. Instead of holding a hearing using only resources available through the newspaper or media, how effective would that be and how productive would it be.

Mr. CÁRDENAS. Another point that you bring up, thank you very much, is this: If we had a hearing in 10 legislative days and for some odd reason there was little to no factual information that we could deliberate, then that would be a perfect example of us perhaps speaking to the issues of maybe the inadequacies of the resources that we as a country, as local governments, or what have you, are putting into our investigative authorities, that within 2 weeks to 2 months we know little to nothing about the cause and effect of such a tragedy that it is such of great import that we actually had a moment of silence.

Now, understand, we very 89 people on average that die every day in this country, but yet we only have an average of about eight moments of silence a year on the House floor. So, again, that brings back the purpose of my resolution, is that we would be changing the rules based on the gravity of—certain situations that have the

gravity that actually cause us to have a moment of silence. There are when you look on an annual basis, 32,000 people die every year. But yet at the same time we only have about eight moments of silence.

So, again, we are talking about the most egregious, most heightened instances in the United States where the House of Congress pauses and has a moment of silence. And sometimes, as you well know, sometimes our moments of silence actually have comments from the Speaker and/or somebody from that state likely to stand up on behalf of that community and make other comments about what a tragedy it is.

So, again, I am not talking about every death in America we would have a hearing, only, again, on average since the Sandy Hook incident, that tragedy, we have only had an average of seven to eight moments of silence a year since then.

Mr. NEWHOUSE. Well, again, I appreciate you bringing the idea forward. I do have some, I think, concerns. But whether or not the moment of silence should be the trigger to hold a hearing or some other metric might be more appropriate, but certainly it is an issue that is very important to all Americans. So I appreciate you bringing the idea forward.

Mr. CÁRDENAS. Thank you. And you bring up another good point. Perhaps myself or somebody else could actually introduce a resolution saying that every time in any calendar year we have at least 10,000 people who have died due to gun violence, that would trigger the House of Congress saying it is time that we discuss that matter, we have had 10,000 Americans dying at the hands of guns in our country. And based on the information that I provided today, that would be perhaps three hearings a year, because we are seeing over 30,000 people die every year. Maybe that is the threshold.

But the silence that we have is ironic, that a moment of silence that we have about seven or eight times a year, we have had zero hearings on those matters that we have had a moment of silence on.

So that is the irony of it, is my resolution is trying to strike that balance between us showing our understanding and our remorse for such a tragedy, but yet at the same time, with all due respect, we are not clergy. Some of us might be. I am not. But the fact of the matter is we are elected as legislators. We are elected as problem solvers. We are elected to address the issues that face this country that are so egregious that we need to be involved in the solution.

Thank you.

Mr. NEWHOUSE. Thank you.

Thank you, Mr. Chairman. I yield back.

Mr. STIVERS. Thank you.

We have been joined at the hearing by the honorable member from Massachusetts, Mr. McGovern.

Do you have any questions for the panel?

Mr. MCGOVERN. Just a couple.

Mr. Rooney, I didn't hear you testimony, but I am looking at your amendment, which I certainly would support. I would just expand it. I mean, to be honest with you, the idea that people here complain about that the executive has too much power, and we have

just handed over to the executive the ability to determine where some of these Federal funds that we all allocate go, it never made any sense to me. And if people want to put in safeguard provisions to make sure that every earmark is vetted, I am all for it. We banned earmarks supposedly as a reform, but I think it has been a terrible, terrible mistake.

But I think if there was a secret vote of both Democrats and Republicans who maybe are not in the Republican leadership right now, I think we would reinstate earmarks. And, again, I am all for checks and balances, but we are in a situation now where it is out of control.

Mr. Cárdenas, I absolutely agree with you. Look, here is the deal. The reason why I think you feel compelled to bring this idea to the committee is because in the greatest deliberative body in the world, we don't deliberate very much. And I think that there is a great deal of frustration over that.

And nobody is saying on the issue of gun violence that everybody has to agree with every single hearing or every single vote that may come up. But the fact that there is silence here, I mean, we have moments of silence followed by silence, followed by indifference, followed by inaction, I think is stunning.

And I have lost count of how many people, and, again, not just people who like me, but some people who don't like me very much, who just always ask: Why won't you even talk about this? Why won't you even do it.

And we only do moments of silence when we have a massacre. As you mentioned, we don't do it on the deaths that happen each and every day. But, I mean, I have to be honest with you, I am embarrassed for the institution that on an issue like this where thousands and thousands of people are dying each year we can't even find the time to talk about it.

And, again, I mean, people have different ways of dealing with gun violence and that is all legitimate discussion in a hearing or on the House floor. But to do nothing, it is pathetic.

And so I support what you are trying to do. And maybe it might give people some pause to, if they don't want to embrace your idea, maybe let's bring some of these issues to the floor and have a debate and a vote and wherever it ends up it ends up. But to do nothing should not be an option.

Mr. CÁRDENAS. Yeah. Thank you. And again, my resolution doesn't require that a Member introduce legislation every time we have a moment of silence. It doesn't require that a committee or the House even pass legislation.

Basically what it will require is, just like we openly have that moment of silence before the entire public on the House floor because it is recorded and sent out to the world for anybody to watch, we would actually have a dialogue as elected Members of Congress on the matter in which we had a moment of silence so we can at least express and/or dialogue, hopefully in an intelligent, informed manner, with witnesses and dialogue and interaction.

Mr. McGOVERN. Well, the other advantage of what you are suggesting is that it would be an indication to the American people that we care enough about this that we want to talk about it, which right now—

Mr. CÁRDENAS. The moment of silence actually shows that we care, right? It is one thing for us to show that we care, but it is another thing for us to show we are willing to roll up our sleeves and actually deliberate and/or possibly, possibly, actually do something that would prevent future incidents like that.

Mr. McGOVERN. I would argue with you that I am all for moments of silence, but that we have done so many moments of silence followed by nothing that they have become empty gestures, and I think that is troubling.

But thank you very much to both of you.

Mr. STIVERS. Do you yield back?

Mr. McGOVERN. I yield back.

Mr. STIVERS. Thank you.

Thank you both for being here. You certainly both have put some thought into your proposals. You are free to go. I really appreciate your thoughtful testimony.

Mr. ROONEY. Thank you.

Mr. STIVERS. The outstanding chairman of our Intelligence Committee and an esteemed member of the Ways and Means Committee, the great Member from California, Mr. Nunes, has been waiting very patiently. And I appreciate him being here to offer proposals for our rules for next year.

Mr. Chairman, I would remind you that when you sit down, when you testify, pull the microphone close because they don't work very well in a boom situation, and make sure the green light is on.

Without objection, I would like to allow any written materials that you brought with you be inserted into the record, and we welcome your comments. Thank you for being here. Thank you for your ideas about how to make our next Congress work better.

With that, I would like to yield to Mr. Nunes and inform the panel that I understand Mr. Palmer from Alabama is on his way. If he is here before you conclude your testimony, I would like to add him to this panel. And if he gets here once we are in the questioning, we will add another panel. And if he doesn't get here, we will probably adjourn.

So with that, I will yield to Mr. Nunes.

STATEMENT OF THE HON. DEVIN NUNES, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. NUNES. Well, Mr. Chairman, thank you so much for holding this very important hearing because changes have to be made here in Congress. And I want to outline two problems that I see and solutions.

So, obviously, we know the turmoil that can be created with a huge leadership vacuum in the middle of a Congress. We saw that this Congress where any Member, if they want to go out and offer something, if it becomes popularized over the Internet, becomes a fundraising tool, and the next thing you know you have people attacking leaders of our respective parties.

So the first amendment that I would propose to clause 1, rule IX is to only allow for a resolution that vacates the Office of the Speaker to be privileged if it is offered at the direction of the majority or minority conference or caucus. In other words, a majority

of the conference or caucus should have to vote to vacate the Office of the Speaker before a resolution can be offered as a privileged one on the floor of the House.

This change would align the treatment of motions to vacate the Office of the Speaker with the treatment of resolutions from the committees of the House. It would also ensure that resolutions that vacate the Office of the Speaker can garner the support of either the majority or minority conference or caucus before the resolutions are considered on the floor.

So I think this is a pretty straightforward amendment, and I hope that we would consider it in next year's Congress.

The second issue that I would like to bring up is one that I think other Members have skirted around the edges of it, but it is how do we really bring back the power of the purse and how do we use our time wisely here as Members of Congress.

So my suggestion is, and this is conceptual only at this point, would be to combine the powers of the appropriating committee with the authorizing committees. How that looks, I think there is a few different structures that you could go down on that road. But this is not a new idea. The Appropriations Committee didn't exist until 1865. And between 1880 and 1920 authorizing committees also possessed jurisdiction over appropriations bills.

The former chairman of this committee Mr. Dreier, spent a lot of time on this in the mid-1990s, so about 20 years ago, at looking at different ways to combine these. But given the wide scope of the Appropriations Committee's current jurisdiction, the authorizing committees possess the greater policy experience in their respective areas of jurisdiction.

So the change, I think, would reduce the duplication of efforts. I think it would potentially take the time that we spend on the floor offering amendments each year, walking through appropriations bill after appropriations bill, I think we would stop that duplication of effort. And I think it also solves the problem that we face here, and that is of authorizing committees at the end of the day, it is really tough for them to actually change law. So in kind of a simple sense, what I am saying is that every time we pass an appropriations bill from here it, in effect, would be an authorizing bill.

I think there are a few different ways to go about it to structure this. This is, like I said, this is just a concept. But we would have 8 to 10 A committees. Every Member that comes to Congress, Republican or Democrat, would sit on one of these A committees. And then we would have a series of B committees that would be maybe select committees like this committee or others. Obviously, the Ethics Committee comes to mind as another select committee. And then there might be some appropriations/authorizing committee combinations that would also be B committees.

So the concept would be that every Member would have one A committee that would have appropriations and authorization power and then there would be enough B committees where each Member would probably have a second committee of some kind.

I think what this really would do is it would make this place a lot more efficient, because essentially each committee would have their week or 2 during the year that they would bring their bill up

to the floor. Members would bring their amendments before this committee. You guys would decide what amendments are made in order. And then we would take a week or 2, debate those issues. And I think there would be a lot more buyin from the Members.

And I think that is one of the challenges that we see here is there is just not a lot of buyin from Members here. Because if you sit on—and I did this when I was first here as a freshman—you sit on three committees, you sit on six to eight subcommittees. I mean, look, let's be honest, there is no possible way that a Member of Congress has the time to go to each one of his committee hearings. So if you had two committees, I think it would be much easier, and I think you would spend your time much more efficiently.

So with that, I think the first rule change I offered was pretty self-explanatory and I think is absolutely necessary. The second one is more conceptual, but I would like for this committee to think about it and of course both of the parties to think about it. I am going to bring this up at our Republican Conference I think this afternoon.

So with that, I would be open to any questions or discussion that we could have here before the people of the House.

Mr. STIVERS. Thank you, Mr. Chairman, for being here. Thank you for those thought-provoking ideas. I think, obviously, the first proposal makes some sense, having seen what we went through, frankly, to make sure that any motion to vacate has some reasonable support before it comes to the floor in a privileged way. My understanding, and I would like to ask you, is that anybody could still offer a motion to vacate, it just would not be a privileged motion unless it had the support from either half of the Republican Conference or half of the Democratic Caucus. Is that correct?

Mr. NUNES. That is correct.

Mr. STIVERS. So it would not prevent anybody from offering anything, it would just change the nature of it to ensure that it is only privileged if it had some modicum of support.

Mr. NUNES. That is correct.

Mr. STIVERS. And your second proposal certainly is very thought provoking. I know certainly for the first hundred years of our country we had no Appropriations Committee, and the authorizing committees appropriated money. And I think that certainly would be a big change, but it is a thought-provoking change, because I do believe that we get sort of drug down into lots of things. And maybe if there was responsibility at each authorizing committee to appropriate the money for the programs there would be a little more accountability, and as you said, I think you called it skin in the game.

But I think it is certainly a thought-provoking idea, and I look forward to talking to you more about it and thinking about it as we move into next year. So we have the month of October, November, and December. We have about a hundred and some days to actually look through and think through these proposals. So we do have enough time to do major changes.

But that is a big change, and it certainly is worth exploring. And I certainly appreciate the ideas you are bringing forward.

Mr. NUNES. Thank you, Mr. Chairman.

If I can add, one of the things that has brought me to this position that probably crystallized it for me was the executive branch's ability to hide within the jurisdictions of the Congress. So we really see that between the Armed Services Committee, the Defense Appropriations Committee, and the Intelligence Committee, where the Defense Department can say: Well this is really only the jurisdiction of the HASC. Or vice versa, they can say: Part of this is for the Armed Services Committee, but, Intelligence Committee, we will give you the intelligence. Well, then neither committee really knows what is going on.

And so we have tried to rectify that with combining the Appropriations and Armed Services Committee, reading their members into more of the intelligence. But at the end of the day, my suspicion is that this is happening quite often between the Resources Committee and then what ultimately makes it into some big omnibus appropriations or bill or minibus appropriations bill.

Mr. STIVERS. Thank you. Thanks for your thoughtful proposals.

Mr. NUNES. Thank you.

Mr. STIVERS. Mr. McGovern, I would like to recognize you.

Mr. McGOVERN. Thank you. Thank you for your thoughtful proposals.

And on your first proposal, I have to say in all candor that every time somebody talks about trying to overthrow the Speaker, I think: Better you than us.

But having said that, I don't think it is good for the institution, and it creates uncertainty and it creates, I think, a climate here where, I think, it makes it much more difficult to get things done. And so I appreciate your suggestion, and I thank you for being here.

Yield back.

Mr. NUNES. Thank you, Mr. McGovern.

Mr. STIVERS. Thank you.

The distinguished gentleman from Alabama, Mr. Byrne.

Mr. BYRNE. Thank you, Mr. Chairman.

I think your first idea is a very good one, and I appreciate your bringing it forward. The second one, as you said, it is conceptual. So it is yet to be worked out. So I would kind of like to talk about a little bit about it with you.

When I was in the Alabama State Senate, I served on both—our budget committee was also our appropriations committee. So I served on the education budget committee, which did the appropriations, and the subject matter policy committee on education. So it was a lot of overlap between the two. So when we were working on the budget, you had people sitting on the committee that knew pretty intimately how the programs worked, how the different parts of the education system in Alabama worked. So it was a pretty well-informed committee.

And I think what you are saying is, is that it would help with the allocation of money, the appropriation of money by Congress to have people who are basically subject matter experts to be on those committees as they are making those decisions. I think I hear that as part of—

Mr. NUNES. That is exactly right. And also the second, I think you bring up a good point about oversight. And I have thought con-

ceptually about, okay, if you had these kind of 8 to 10 super committees along with 3 or 4 other committees that do authorizing and appropriating, I think the best thing to do would be to assign members from those committees to the Budget Committee and to the Oversight Committee, the OGR Committee, so to conduct more of a forensic legal investigation.

So I think it would actually make the Budget Committee and the Oversight Committee more effective because they would have a cross-section of all the committees where those committees could essentially send things to the Oversight Committee for a further investigation, right, like what we currently see numerous investigations going on by Oversight. But one of the challenges is, is that there are not members from all the committees on the Oversight Committee, and so I think that creates problems.

So I just think it would be a better use of Members' time, I think Members would be more educated, and I think the government would be much better for it. And I think a lot of States are run similar.

Mr. BYRNE. And so making sure you are only one A committee assures that you become an expert on the topics that are covered by that A committee, and you are not pulled in, as you said, several different directions if you are on two or three different committees. You would still have a B committee which would be a select committee, like Rules or Ethics, but you would have your subject matter committee, and that is what you would be totally focused on in terms of your committee work.

Mr. NUNES. That is correct. And I think it also gives more power to the legislative branch of government.

Mr. BYRNE. Because you would have those subject matter experts that could master an area as the executive department officials have mastered that same area.

Mr. NUNES. That is right. And I gave the example of kind of in my position of walking into certain—you know, for me to walk over to DOD. And if you read the memo that DOD put out, which I think all of us should be concerned about this, there was a way, and I am saying this bipartisan basis, it was essentially a memo designed by the Legislative Affairs of the Department of Defense on how to divide and conquer Congress. I mean, I think we should take that memo and that should be one of the reasons for our changes.

And I can tell you, if you sit on the Resources Committee, which I sat on in my first term, which I really enjoyed that committee, one of the things I quickly learned is no one at the Department of Interior or Energy cared about you at all. But if you were on the Interior Appropriations Committee, if you were a cardinal, they really cared what you had to say.

But they could easily hide because they knew the appropriators would give them the money, but the appropriators truly had no way to rein them in if there was a program that they didn't like. And then they can always, if there was an authorizing bill, it is always easy to tie it up, because in the Senate, of course, it takes 60 votes to get anything done.

So I think if you had these individual appropriations bills with authorizations heading over to the Senate, I think there are just

a lot more Members that would have policy proposals that would be in there and it would really drive an end to get a legislative product and agreement between the House and Senate.

Mr. BYRNE. Let me sort of ask you to play devil's advocate against your own argument. Obviously, at some point 100 years ago Congress chose to go to this appropriations model. What is the argument, I am asking you to make the argument against your own proposal, but what would be the argument for having a bifurcation of the appropriation and the authorization process? What do we gain from that?

Mr. NUNES. Well, I don't exactly know why during that 50-year period. So for a long time we didn't have an Appropriations Committee. But then there was a 50-year period, roughly, where appropriations and authorization had to have like an agreement of some kind.

So potentially maybe there is a way that you create subcommittees, like a subcommittee below either—because I don't know if you put appropriations ultimately in charge or the authorizing committee in charge, but you might create like a subcommittee within the committee that deals—

Mr. Byrne. My guess, because of the timing of it, was that we went to this pure appropriations format when the Federal budget got to be real big, because for the first hundred years or so of our existence, the Federal Government just didn't spend that much money on a relative basis.

But as we got into World War I, then through the Progressive era there were all these new agencies and everything passed by Congress, we got the income tax which brought in more revenue under President Wilson, then the Federal Government got to be big and it started spending more money, I am assuming the idea was you needed experts on how you spend money from a Federal level at that size.

Have you heard anything that would be like a basis for that?

Mr. NUNES. Well, I think like anything, I think those are all data points that are important. But I am sure about one thing. I think if you go back a hundred years ago and if Members of Congress were sitting here and watched what the executive branch was able to do to us, and I will refer back to that memo the Department of Defense put up, I think they would be astounded.

So I think a lot of times we get into, you know, you have traditions, people get into ruts, nobody wants to make change because change is hard around here, probably for the right reasons. But I think Members of Congress that served here a hundred years ago would be appalled over how the executive branch essentially is running amuck over the legislative branch of government. And I think you see that reflective in the American people today. I think they are very frustrated with our abilities here.

Mr. BYRNE. Well, this would also us to rationalize committee jurisdictions as well.

Mr. NUNES. I think it would make it easier.

Mr. BYRNE. Yeah.

Mr. NUNES. Yeah.

Mr. BYRNE. Well, I appreciate the fact that you brought this up. This is fascinating to me. I know it is just conceptual at this point.

I look forward to talking with you in more detail about it. Because this is the most serious proposal that I have heard to date since I have been in Congress about how we can reassert our authority, because I think our authority under Article I has been trampled upon.

Not just by this President, by the way. This didn't just start with the Obama administration. This is something that has been coming for a long time. And I think it is something that affects both parties.

So I appreciate your serious thought about this.

Mr. NUNES. And you probably get this too, Mr. Byrne, and that is that people always ask: Well, aren't you equal branches of government? Why can't you solve this problem? And there are so many small problems that a lot of Members within their districts, within their State, that should be able to be fixed. And I think the American people are confused as to are these branches of government truly equal or not.

Mr. BYRNE. Well, that is because we have added a fourth branch, and that is these almost autonomous departments and agencies that I don't even think the President has much control over. And I think it is antidemocratic. I think it goes against the very spirit of our Constitution and what the notions of a representative government are all about.

So I really appreciate your thoughts on it and I look forward to hearing more from you and perhaps working with you on this as you go along.

And I yield back, Mr. Chairman.

Mr. STIVERS. Thank you, Mr. Byrne.

I would like to recognize the distinguished gentleman from Georgia who has joined us, Mr. Collins.

Mr. COLLINS. Thank you, Mr. Chairman.

I just want to go back and follow up on this conversation. I appreciate it.

It was mentioned earlier about how States many times operate. This is the way Georgia operates in a little bit different fashion, and I was on the appropriations committee in Georgia. Up here I had to learn the terms of budget, appropriations, authorizing, because in Georgia basically the Governor sends a budget, but then we put the appropriations and authorizing. It all basically comes out in the same piece of legislation. So it is the appropriating bill.

This is something that has frustrated us up here when you have stuff that just goes unauthorized for years and years but it stays in the appropriations side. It is like killing a two-headed snake here. You have to get both sides or you will never get the thing done.

So I appreciate it. I like the idea. I think there are a lot of other issues I know that are being discussed. I was on the floor, unfortunately, for most of the earlier part, but I kept up with it.

We are past the easy changes here. We are past the easy fixes and say: Well, we want to keep this because if our side is in power we want to have it. We are past that. The American people are fed up with it. All you have to do is look at the Presidential election. And you look at the polar sides of both the Democrat and the Re-

publican election cycle and you hear the same things just being expressed from different political perspectives.

So I think your idea is something that definitely needs to be worked on. This idea that our whole budget process, and I know our Budget chairman is even working on this, but it is sort of just anarchy the way that we are doing that, in the sense that it is an archaic sense of we do this budget, it may matter, it may not matter, it goes to a certain point.

People don't understand that. They just want to know why, one, we are not getting it done. Number two, why it is ballooning like it is. And, number three, why can't we have more control over it.

Believe me, there is something to be said from a committee perspective when you are able to sit with a department head across the table from you and say: Not only will you give us the information, if you don't, we will take money from you to do that.

That is the way this thing works, and we had it work in Georgia that way on many occasions when executive branch agencies decided that they were going to not justify spending or not justify something in their budget. And we would come out and say: Okay, well, if we are not going to justify it, undoubtedly it doesn't need to be in the budget. And we would line item it out. Then we would pass it out, and then all of a sudden, it was amazing how all of a sudden we could get information.

So I think this is just something that the congressional branch and both Democrats and Republicans need to have a part of. And this is why we are elected. And if we are not elected for this, I think we are going to have to.

So I appreciate your proposal. It is for some maybe too outside the institutional scope. But I don't think it is. I think historically it is something that works. And it may be time to come back to something like this in this format, how that would work.

But I think at the end of the day, the people would, whether they understood it all at first, would actually say: Wow, this is getting something back to being done, in this part of the body anyway. Can't account for the other side of the building here. But this at least is something for us. And I appreciate you bringing it.

Mr. NUNES. Well, and I also think, Mr. Collins, too, that a lot of people talk about that Congress doesn't work in a bipartisan manner anymore. I think part of the reason that I came to this conclusion also is because on the Intelligence Committee we are known as the most bipartisan committee in Congress.

Now, part of the reason why is because we actually do have a little bit more authority over the appropriations process. And so we do our best to be experts in our field to represent all of you accordingly. But we solve problems together.

And I think, if you had these 8 to 10 big committees, I think you would get a lot more bipartisan cooperation and really looking in, becoming experts, as Mr. Byrne said, in these areas, and Republicans and Democrats would work together because they could really take on these agencies to make better policy to make the government run more efficiently.

Mr. COLLINS. Well, it is just right now we look back and you can look historically through the lens or however you want to look at it, we are looking at it, whether it was 8 years ago, it was depend-

ing on the party in power. Again, it is a constant discussion. Democrats in power maybe in Congress, Republicans in the White House. We don't like it. Republicans in power in Congress, the Democrats.

And we are just not coming together to say how can we actually look at a process that may work further that would breed that more bipartisan support, would actually get things vetted. And it would not, from our perspective, the way we are doing it right now, frankly, we have ceded that power over to the executive branch to sort of set it up and only we can make changes on the edges. And that gets into a whole other discussion on how much oversight we should have in directing the projects and vetting projects and things like that.

So, look, there is much to be said about how we can work better together. The situation right now lends itself to that pinch point that says, okay, it is either all or none. And we just sort of ignore the whole fact over here that many of the things that we are spending money on have lost their authorization, have lost their even ability, under law, should even be funded at all. But yet we just sort of wink, nod, and go on and waive the rules and we move it. So I think this is where people are getting frustrated at us.

So I appreciate your bringing it.

Mr. NUNES. And I would also just say to your point, Mr. Collins, that think of all the time that we spend down on these appropriations bills that we do. And Members offer, what, 400 amendments come to this committee? You guys sit here and comb through them all. And then the next bill comes up and the Members offer very similar types of amendments, and you guys go through the mall, and then we take these votes.

Some of these bills we are hearing over 100 amendments, I mean, and then at the end of the day there is no real push to get these bills done. And you see that now, right, where we have some Members advocating, well, let's just do a CR to next year, which that gives up all of our power. And then you have to ask: Well, what the heck did we do the last year? What were we doing here this whole year offering all these amendments?

I would think the Members would want to stop wasting our time.

Mr. COLLINS. Well, and, Chairman, you have to do this on the intel side, you have to have that authorizing piece that is being kept up. But many of the committees, for whatever reason, have abdicated that responsibility. They just don't get into that because they either feel it too politically difficult or they can't get the right answer or they just won't spend the time into the authorizing pieces that we need to have. And that is not personal in any one particular committee, but it is just a fact of life, I mean.

And you have got so many committees now that are off the authorizing process. So in other words, they deal with their areas, but they are not authorizers to start with. So the only time they have a chance to "be a productive player" is on those 100-plus amendments that we see that I have sat through many hours on the floor with.

Mr. NUNES. Right. And you and I and everybody in this room knows that those amendments seldom ever make it past the process. And they really don't have any authorization ability. They are

good for messaging, but at the end of the day, they don't become law and they don't have an impact.

Mr. COLLINS. Well, and that is why the process. And it goes back to what has always been said: If you really want something changed in the appropriations process, you start in the Appropriations Committee. You get it written into the base language of the bill. You do it the way that we should be doing these things to start with.

You are exactly right, because many people who come who have never had legislative experience or anything, when it does actually work like it should and goes to the Senate and we have that thing called a conference committee, which needs to be used a lot more around here, there are going to be things that are dropped out, and there are going to be things that are dropped out simply because votes are not where they need to be, and they will look back to that base text.

It is a whole new world of thinking. We have got to start thinking in different terms around here. Otherwise we will see the churn, if you would, of discomfort among Members. How many times have you or I been in a group of Members and the thought will come: What are we doing? Why are we in this boat again? Well, it is the same thing over. And I don't care if it is the Democrats in charge or Republicans in charge. It has been said now for a long time. And so some of these changes, whether they get taken, they don't get taken, there are other areas that we can look on.

But this is an area that just really hits at the whole, from our perspective, hits at really, I think, what Mr. Byrne said, was having that expertise area, something you want to be a part of, you feel valued, your input is valued, and you are able to look into areas in your district or in your State or in your region that actually make a substantive difference, that you can go home and say: Okay, I am listening to you. Here is how we changed it. Here is how we authorized it. We are not just doing something that we expect the rest of the country to do, we are actually doing it here.

So, again, I think it is a great idea. Let's continue these conversations. The worst thing I could see, and I know the chairman is not wanting to pass this off, is to have these hearings and do nothing. Because I am firmly committed to helping any way we can to actually find substantive changes that can work for both sides. And if we can do that, then I think we will benefit from it. So I appreciate that.

I yield back.

Mr. STIVERS. Thank you to the gentleman from Georgia. And I will say that we are committed on this subcommittee to listening to the Members, continuing to work with the Members as we work to perfect the rules for the next Congress, because, as you said when you opened, changes are needed.

The gentleman from Washington, Mr. Newhouse.

Mr. NEWHOUSE. Thank you, Mr. Chairman.

And thank you, Mr. Nunes, for bringing a couple very intriguing ideas forward. You always have good insight on ways to make things better.

I always thought the Rules Committee was the most bipartisan committee, but apparently there is a different opinion on that.

Mr. NUNES. This might be the most bipartisan I have seen it.

Mr. NEWHOUSE. I will give you that.

Mr. MCGOVERN. That is because I am here.

Mr. NEWHOUSE. We are having a good day, just put it that way. But, no, I appreciate it.

I really like the first idea you brought forward. I think it allows an individual to effect change but not be so disruptive to the institution that it could be seen as a nuclear option. So I appreciate your thoughtfulness there.

And then in the appropriations process, it seems to me what you are bringing forward would allow engagement by all Members in a very important process and not just relegate it to the amendment process on the floor, which, as you said, lacks perhaps some of the effectiveness we would like to see happen.

It almost appears to me that we would have, instead of one Appropriations Committee, 8 to 10 or 12 Appropriations Committees, that every Member would have a role to play and become experts in those areas that are so important. You can be an inch deep and a mile wide around here pretty easily. But if we can focus our efforts on particular committees, I think that would be very helpful not only for us individually, but for the Congress and the work we do.

Do you think—and I don't want to re-cover a lot of ground that has been covered, I appreciate the conversation so far and your answers—but do you think by making this change—something that has been very frustrating to me is us not completing our appropriations task—would this be more conducive to actually getting appropriations bills across the finish line and following through with our responsibilities and getting the appropriations process done every year?

Mr. NUNES. I think the odds would be higher, because I think the more bipartisan cooperation that happens to actually go in and solve problems, and the more a committee works together to put forth a product every year, and then that committee would have had to rally support on the floor for their bill, I think you just get a lot more buy-in from all the Members that ultimately pushes the chairman and ranking member of that committee, if they want their committee to be relevant, and if you are sitting on an A committee, I can't imagine you don't want to be relevant here, it means that you are going to have to pass something overwhelmingly, you are going to have to work with the Senate and push the Senate to get something done.

And then even if you end up in a minibus or omnibus situation, at least those chairmen and ranking members will be represented in the room. Where today when we do these omnibus bills, and I am not saying anything bad about the Members, but at the end of the day, it is only basically one Member from the Republican Party, one Member from the Democratic Party in the room on the entire spending bill for the year. At least there would be more people engaged, more people at the table at the end of the day when you are trying to close up an agreement.

Mr. NEWHOUSE. Well, that has certainly been one of the biggest frustrations of me as a freshman, of seeing our appropriations process essentially break down. And I think that frustration is shared

by a lot of people. This whole process becomes kind of a black hole. It is hard to get information, hard to know exactly what is going on. So anything that would improve the process I am certainly willing to look at.

Mr. NUNES. Remember on the Senate side too, most of the Senators sit on both the Appropriations Committee or the Finance Committee and then the authorizing committees. So they have got their hands in both of those pots. So we are really at a disadvantage when we are dealing with the Senate, because they do have that power coming from both angles.

Mr. NEWHOUSE. Well, good. My compliments to you for bringing this forward. And I agree. And, like I said, I have really appreciated the conversation and the questions. And hopefully we can move forward to something positive here.

So thank you, Mr. Chairman. I yield back.

Mr. STIVERS. Thank you.

And one final thing I just thought of as Mr. Newhouse was asking his very thoughtful questions. I would ask you, as you are putting together the actual language on the second proposal, you try to be thoughtful of the many great Members we have with a lot of tenure on the Appropriations Committee and give them credit for their tenure on the Appropriations Committee when they move to another committee if we were to accept this rule.

Because I think, while they will still all be against it, it at least would give them credit and not just have them starting from scratch and starting as if they are a brand new Member on a committee, giving them some kind of thoughtful consideration. Maybe straight credit for every year they served on the Appropriations Committee to any committee that they would transfer to.

Mr. NUNES. Well, I wanted to share it before the public because I think transparency is important and I think ideas are important to come forward in order to make the best product if we do end up making some major changes in the next Congress.

Mr. STIVERS. Very thoughtful and provocative idea and it is certainly worth looking into. Thank you. And really appreciate you being here.

I would like to recognize Mr. McGovern. I believe he has something to submit for the record.

Mr. McGOVERN. I have a few unanimous consent requests, Mr. Chairman.

One is Congresswoman Schakowsky, who couldn't be here, had a proposal that the committee chairs should consult with ranking members before issuing a subpoena. And if the ranking member objects to the issuance, there should be a vote of the committee, and the chair should post the subpoena and justification for the subpoena on the committee Web site and Clerk's Web site. So I would like to ask unanimous consent to insert her testimony.

Mr. STIVERS. Without objection.

[The statement of Ms. Schakowsky can be found in the Appendix as Insert 2-1]

Mr. McGOVERN. Also, I ask unanimous consent to insert into the record a letter from Democrats on the Energy and Commerce Select Panel dated February 12, 2016, that details Chairwoman Blackburn's abuse of her unilateral subpoena power and failure to

comply with the committee's requirement that she should consult with the ranking members prior to issuing subpoenas. I would like to have that put in the record.

Mr. STIVERS. Without objection.

[The statement can be found in the Appendix as Insert 2-2]

Mr. McGOVERN. And I ask unanimous consent to insert into the record a letter from Congresswoman Schakowsky, the Select Panel's ranking member, to Chairwoman Blackburn, dated June 3, 2016, that expresses the ranking member's concern over how the chair's abuse of her unilateral subpoena power has led to the disclosure of private medical information.

And I would also like to ask unanimous consent to insert into the record a letter from Ranking Member Johnson of the Science, Space, and Technology Committee to Chairman Smith dated June 23, 2016, that highlights the chair's abuse of his unilateral subpoena power and explains how this decision to issue subpoenas to State attorneys general regarding their investigations of Exxon's alleged fraud regarding climate change is an illegitimate and unconstitutional encroachment on State sovereignty.

And finally, I would like to ask unanimous consent to insert into the record a letter from Ranking Member Cummings to the Committee on Oversight and Government Reform to Chairman Chaffetz dated September 9, 2016, detailing the chairman's abuse of his unilateral subpoena authority in order to tarnish the Democratic candidate for President.

Mr. STIVERS. Thank you. Without objection, those will be submitted into the record.

[The statement of Mr. Cummings can be found in the Appendix as Insert 2-3]

Mr. STIVERS. Without objection, any other materials submitted to the subcommittee for purposes of this hearing shall be printed in the record.

Mr. STIVERS. Hearing none, without objection, the committee is adjourned.

[Whereupon, at 11:50 a.m., the subcommittee was adjourned.]

APPENDIX

PREPARED STATEMENTS

INSERT 1A-1: Statement of the Hon. John Culberson, a Representative in Congress from the State of Texas

Statement of**Congressman John Culberson****before the****Subcommittee on Rules and Organization of the House of the Committee on Rules****September 14, 2016**

Mr. Chairman, Ranking Member Slaughter, and Members of the Subcommittee, I am pleased to have this opportunity to discuss language Rep. Rooney and I drafted that would bring back Article I, Section 9 spending in a way that is transparent and responsible.

Five years ago, we put in place an earmark ban with the best of intentions. Today, it is clear that the earmark ban has resulted in less transparency and an abdication of our constitutional duty.

Among many other problems, the current earmark ban prevents Congress from:

1. deepening U.S. ports to handle the larger ships that can now run through the widened Panama Canal; and
2. fully protecting the U.S. against the North Korean ICBM threat.

When they endorsed my proposed language, the King Street Patriots clearly outlined the importance and need for this change stating:

“Representative Culberson’s common-sense proposal is a positive step towards reining in spending in Washington. Current congressional earmark rules suffer from loopholes and blind spots - effectively rendering the original ban useless. The proposed reforms would allow taxpayers to track all spending - empowering the grassroots to apply pressure where necessary. Americans are rightfully concerned over the White House’s willingness to consolidate power and boastfully side-step Congress. Rep. Culberson’s proposal is an effective check against this unbalanced trend. Taxpayers across the nation have a duty to demand this kind of accountability from the federal government.”

We’ve had to put in place work-arounds to get bills passed under the current earmark ban. For example, the messy solution we found for WRDA bills is to rely entirely on recommendations from the Army Corps of Engineers regarding what projects need to be funded and at what levels. But this solution fails to provide us with any flexibility to increase or accelerate funding for projects and has abdicated our constitutional duty.

Article I, Section 9, Clause 7 of the Constitution is clear -- "No money shall be drawn from the Treasury but in Consequence of Appropriations made by Law"

Modifying the current earmark ban will restore Congress's constitutional duty and allow us to more effectively use the power of the purse to rein in the Administration and unelected bureaucrats.

My proposed language would allow us to modify the current earmark ban so that Congress would be able to make transparent, line item appropriations. This language has been endorsed by two Houston area Tea Party organizations as well as by the Harris County Republican Party.

My proposed language:

- Restores the power of the purse without increasing spending;
- Requires total transparency from subcommittee to final enactment;
- Restricts targeted spending to federal, State or local government; and
- Restores Congress' most powerful check and balance on the Executive Branch.

If we adopt this proposed change, we will no longer be abdicating our Constitutional responsibilities to unelected bureaucrats in the back offices of federal agencies. It should be Congress, not agency bureaucrats who decide how to spend our constituents' hard-earned tax dollars.

When they endorsed my proposed language, the Harris County Republican Party outlined the importance of restoring the power of the purse stating:

"Congressman John Culberson's amendment helps restore direct spending in a manner that allows authorization of projects in a geographically specific location for federal, state and/or local government and requires sponsoring Congress members to identify themselves, and the earmark does not increase the spending above the level authorized in the annual Congressional budget. The Harris County Executive Committee, supports legislation that will reigning in earmark spending and facilitate more transparency and accountability in the spending of taxpayers dollars. The Harris County Executive Committee urges the passage of this amendment..."

I support keeping the earmark ban in place, but modifying it in order to allow Members to authorize projects that have a clear federal nexus in a geographically specific location for federal, state, or local governments.

Mr. Chairman, I would be pleased to respond to your questions and those of other Members of the Subcommittee.

RESOLUTION

Amending the Rules of the House of Representatives to further strengthen the rule regarding congressional earmarks.

Resolved, That (a) paragraph (a) of clause 9 of rule XXI of the Rules of the House of Representatives is amended to read as follows:

“(a) It shall not be in order to consider—

“(1) a bill or joint resolution reported by a committee if that bill or joint resolution or accompanying report contains any congressional earmark unless—

“(A) it is for a Federal, State, or local unit of government for a purpose that involves a direct Federal interest, whether or not it is targeted to a specific State, locality, or Congressional district;

“(B) the Member, Delegate, or Resident Commissioner sponsoring such congressional earmark is identified;

“(C) the congressional earmark is initiated in committee; and

“(D) the congressional earmark falls within the applicable section 302(a) allocation and does not increase total spending for any fiscal year;

“(2) a bill or joint resolution not reported by a committee if it contains any congressional earmark; or

“(3) an amendment to a bill or joint resolution described in paragraph (1) or (2).”

(b) Paragraph (d) of clause 9 of rule XXI of the Rules of the House of Representatives is repealed and paragraphs (e), (f), and (g) of such clause are redesignated as paragraphs (d), (e), and (f), respectively.

INSERT 1A-2: Statement of the Hon. Pete Sessions, a Representative in Congress from the State of Texas

U.S. HOUSE OF REPRESENTATIVES
OFFICE OF THE LEGISLATIVE COUNSEL
WASHINGTON, DC 20515

September 13, 2016

Honorable Pete Sessions
H-312 The Capitol
Washington, DC 20515

Dear Chairman Sessions,

Thank you for providing me with the opportunity to make recommendations to you and the Committee on Rules for revising the Rules of the House with regard to the requirement for a comparative print (known as a "Ramseyer") to accompany each bill or joint resolution reported from committee that proposes a change in law to ensure that readers of the comparative print have context sufficient to understand the changes to be made by the proposed legislation. I have attached a proposed revision of the requirement that I believe accomplishes this goal without the unintended effects described in your letter.

In addition, I am pleased to answer the specific questions addressed to me in your letter of September 12 with the questions repeated here for your convenience.

1. Please describe the current process your office uses to produce a comparative print for a committee reporting legislation. How much is automated and how much must be done manually? Response: Our office produces a comparative print using a suite of Ramseyer software tools, known as the Ramseyer tool, developed by DataStream Corporation specifically for our office. These tools require two types of inputs. The first is the measure containing the proposed amendment to law. The second is the law itself. Both of these inputs must be in electronic form with appropriate xml tagging for the tool to work properly. Because a significant portion of Federal law is not codified as "positive" law in the United States Code, our Office maintains compilations of many of the nonpositive Federal laws in the appropriate xml form. As a service to the House of Representatives and the public, we post these compilations of nonpositive Federal law on our website in PDF form. If the proposed amendment is to a Federal law that we do not maintain, then our Office must find that law in the Statutes at Large, update it, and ensure that it is in appropriate electronic form before proceeding to use the Ramseyer tools. The Ramseyer creation process itself requires several steps. The first is produces a draft reported bill followed by an outline of all laws amended by the bill (as reported). The software is designed to add efficiencies to the comparative print (or Ramseyer) generation process and to indicate successful and unsuccessful executions of amendments. Our Ramseyer team conducts a detailed

review of all amendments to existing law shown in the comparative print, edits manually when necessary, and checks their work for accuracy. Each failure of an amendment to execute properly is noted to determine the cause of the failure and any software and nonpositive Federal law related errors are handled manually as necessary. At this stage, any drafting errors causing these failures are identified and made known to the responsible attorney for correction, if possible. The Office has continued to perfect the Ramseyer tool over time and the number of errors caused by variations in drafting approaches to proposed policy solutions has diminished greatly. However, there is an ongoing need to manually address those situations that have proven difficult for software to address. In addition the Ramseyer tool was never designed to merely replicate current law without change; so compliance with the Ramseyer rule in this Congress (see question 2 below) has necessitated us to undertake an inefficient, manual process of undoing the changes that the Ramseyer tool was designed to show in order to comply with that part of the current Ramseyer requirement.

2. One of the changes made in the Ramseyer rule for this Congress was the requirement to print the entire section of the statute being amended. Is a section the best division of legislative language to provide context for every statute, or would a more flexible standard be appropriate? Response: This is a difficult question due to differences in the structure used in different Federal laws enacted over literally the last 2 centuries. As a general matter, a section is the organizing unit around which a Federal statute is constructed (see 1 U.S.C. 104). However, structural and other considerations relating to a particular law at the time it is amended may require the drafter to use a different unit of organization. This may require the drafter to use a subsection, paragraph or lesser unit for the expression of major, but related, policies. In these cases proposed changes to law, especially in cut and bite form, may be lost to the reader if an entire section of 10 or more pages is provided. The smaller unit (often the subsection) will be more appropriate in achieving the balance of providing sufficient context for understanding the meaning of the proposed amendment while not overwhelming the process with additional provisions. So, in direct response to your question, a section may not be the best context for reviewing amendments to every statute and a more flexible standard—particularly using a subsection as a basic unit—would in most cases provide a better balance of context and length.
3. Do you believe that it is necessary for the comparative print contained in a committee report to contain the entire, original text of the section of statute being amended without adulteration, and then separately print a version showing proposed amendments, or would a single print suffice? Response: I believe that a print which contains both the original text without change and the text showing the proposed changes by appropriate typographical devices is not necessary. Both the bill and the Ramseyer contain sufficient information for the reader to locate the original text in unadulterated form, often in the United States Code that is maintained and is easily accessible in electronic form by the Law Revision Counsel.

4. Has your office developed other tools, including software tools, to show changes in statute and pending legislation? If so, please describe the status of these projects and how you see them fitting into the "toolbox" available to legislative drafters. Response: Our Office is developing additional software tools to assist in the drafting process. The tool most similar to the Ramseyer tool discussed above is known as the mini-Ramseyer tool. This tool is run against a draft, or a part of a draft, as it is being written at any point in the legislative process and is used now by drafters to check the accuracy and context of amendments to current law. In its present form, this tool has limitations. First, the tool has the same prerequisites that the full Ramseyer tool has (such as the law being amended must be available in appropriate xml form and it does not handle all known drafting conventions). Secondly, when this tool fails to execute particular amendments, it does not give the drafter the opportunity to correct the mini-Ramseyer manually. Rather, it assumes that the drafter has full control of the draft and will make the necessary corrections for the tool to properly execute the amendment. Lastly, because the mini-Ramseyer was designed for drafters and not for those expert in the full operation of the Ramseyer program, it does not provide all of the "back room" tools to work around known short-comings in the program. The Office is addressing these areas of failure and is engaged in updating the tool to address these failures to provide greater accuracy in the output.

The Office also is developing a similar tool to be used in the context of amendments to bills. This tool is known as AIP or amendment impact program. This tool is functionally similar to the mini-Ramseyer tool but the Office is able to take advantage of more current xml developments to make it more user friendly. The Office is currently working with the Rules Committee and Xcential, our outside contractor, to improve and make the output from this tool more widely available.

In addition, the Office is developing a web-based program (Legislative Lookup and Link, or "LLL") that is designed to provide easy access to drafters and, eventually, to Members and staff to look up in its entirety the text of statutory provisions that are referenced or amended in bills. This would facilitate users who wish to see a "bigger" context than the Ramseyer tool might otherwise provide.

I am happy to answer additional questions and provide the Committee with additional information with respect to these matters.

Sincerely,



E. Wade Ballou, Jr.
Legislative Counsel

COMMITTEE ON APPROPRIATIONS

CHARMAN,
SUBCOMMITTEE ON COMMERCE,
JUSTICE, SCIENCE AND NASA

SUBCOMMITTEE ON
HOMELAND SECURITY

SUBCOMMITTEE ON
TRANSPORTATION, HOUSING
AND URBAN DEVELOPMENT,
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September 12, 2016

Chairman Pete Sessions
Committee on Rules
U.S. House of Representative
H-312, the Capitol
Washington, D.C. 20515

Chairman Steve Stivers
Subcommittee on Rules and
Organization of the House
H-312, the Capitol
Washington, D.C. 20515

Dear Chairman Sessions and Chairman Stivers:

Thank you for providing Members an opportunity to testify with our thoughts on possible changes to the House Rules for the 115th Congress. It is my understanding that this hearing will be held on September 14.

I would like to testify at the hearing regarding language supported by myself and Congressman Tom Rooney that would bring back Article I, Section 9 spending in a way that is transparent and responsible. The language Rep. Rooney and I drafted would allow Members to authorize projects in a geographically specific location for federal, state, or local government. It requires that the project receiving the funding be authorized by law and have a federal nexus. It requires that the sponsoring Member be identified, and requires that the project does not increase spending beyond the 302(a) allocation.

Please let me know if you have any questions, or need any additional information. Thank you for your time and attention to this request.

Sincerely,

John Culberson
Member of Congress

INSERT 2–1: Statement of the Hon. Janice D. Schakowsky, a Representative in Congress from the State of Illinois

TESTIMONY FOR RULES COMMITTEE MEMBERS DAY

Mr. Chairman, I appreciate the opportunity to testify today. I propose two changes to Congressional subpoena rules: (1) require the agreement of chair and ranking member or a committee vote before a subpoena is issued and (2) require transparency on the subpoenas that Congress issues.

Subpoenas are one of the most powerful tools of government. They compel people to turn over information – sometimes sensitive and personal information against their will – to the government. It is an important power as part of legitimate investigations, but it is a power that should be used judiciously and as a last resort.

I feel strongly about the need to amend the rules governing congressional subpoena authority because I've seen the Chair of the Select Investigative Panel, where I serve as Ranking Member, repeatedly abuse the unilateral subpoena power granted by the current rules. This experience – which, unfortunately, has not been limited to the Select

Panel – underscores the need to have uniform, fair rules that ensure responsible use of this powerful Congressional tool.

Over the past several months, Select Panel Chair Marsha Blackburn has issued 36 subpoenas to physicians, medical researchers, small businesses, local government offices, and others.

All were issued unilaterally by the Chair – without any effort to consult with me, the Ranking Member. The Select Investigative Panel did not debate or vote on the subpoenas. And the Chair then refused to provide Democratic members of the Panel with copies of the subpoenas – telling us that we would receive our copy only after they were served.

Some of those subpoenas were ridiculously overbroad, probing into personal matters that Congress has no business examining. Many had unrealistic deadlines. And 30 of the 36 subpoenas were sent without *any* effort to obtain voluntary compliance first.

We need rules to ensure that this Panel's and every Committee's investigations are fair, balanced, and fact-driven. The American people should be extremely concerned that a single Member of Congress can demand information from private citizens under the threat of contempt.

My rules proposal would address the current problem of unilateral subpoena authority by requiring agreement of the chair and ranking member or a committee vote before a subpoena may be issued. This is not a new concept. It was the historical practice of almost all House committees until the past few Congresses, when the Republican majority enacted rules that now give multiple committee chairs unilateral – therefore unchecked and increasingly unreasonable – subpoena authority.

We should restore our prior practice. The ranking member should know who is being served, what is being requested, why it is needed, and what efforts have already been made to obtain voluntary compliance. If the ranking member then objects to the proposed subpoena, the matter should be referred to the committee for a vote. This

process ensures sufficient accountability, transparency, and public debate. It also provide a critical check against misuse of Congressional subpoenas for purely partisan purposes, or to bully, harass, or intimidate private citizens.

In addition to safeguards on the issuance of any single subpoena, we also need greater overall transparency and accountability regarding the number of subpoenas issued across all of the House committees.

Right now, there is no single place that lists all subpoenas issued in this – or any other – session of Congress. These records should be easily available to Members, staff, and the American people.

Under my proposal, that would change. Within twenty-four hours of a subpoena's issuance, the relevant committee chair would post on the public websites of the relevant committee and House Clerk the subpoena and an explanation of why it was issued. In circumstances involving sensitive information, my proposal would require only the date and a general description of the subpoena.

Over the past several months, I have seen firsthand the abuse of power and damage allowed by the grant of unilateral subpoena authority. This power has been abused to bully, harass, and intimidate private citizens, who have been issued subpoenas and sometimes given only twenty-four hours within which to comply. My proposed changes would restore the traditional practice to ensure that Congressional investigative authority is used appropriately.

Our constituents expect us to conduct Congressional investigations in a fair and fact-driven manner. To achieve that end, committees should use subpoenas as a last resort and issue them with bipartisan agreement – or at least a committee vote.

Thank you for hearing my proposal, and I urge its inclusion in the rules for the 115th Congress.

INSERT 2–2: Statement of the Hon. Janice D. Schakowsky, a Representative in Congress from the State of Illinois

FRED UPTON, MICHIGAN
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS
Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

February 12, 2016

The Honorable Marsha Blackburn
Chair, Select Investigative Panel
U.S. House of Representatives
Washington, D.C. 20515

Dear Madam Chair:

We are writing to request that you abandon your plan to issue subpoenas or immediately schedule a special meeting of the Select Panel in order to vote on your proposed use of compulsory process to force healthcare providers and others to disclose the names of doctors, medical students, and clinic personnel. We firmly believe that this is an abusive and unjustifiable use of the chair's unilateral subpoena authority.

The Democratic Members of the Panel repeatedly have asked you not to seek this type of personally identifiable information and to put in place clear rules that would govern the Panel's handling of any sensitive information that it receives. We have done so out of serious concern that any disclosure of names jeopardizes individual privacy and safety. To date, you have ignored our requests to meet and have refused even to discuss the issue with us.

You have also excluded us from discussions with recipients of your document requests. It is our understanding, however, that the organizations that are about to receive your subpoenas have been in negotiations with your staff and have taken substantial voluntary steps to comply with your requests. In fact, counsel for one of these organizations assured us that he had reached agreement on every paragraph of your document request letter and his production is not due until next Tuesday, February 16, 2016. The decision to use your unilateral subpoena authority – even before the due date for production of the documents that you have requested – is an abuse of the position of the chair.

Existing rules of the Energy and Commerce Committee require more than mere notification of your intent to issue subpoenas. Those rules obligate you to "consult with the ranking member at least 72 hours in advance of a subpoena being issued."¹ You advised the ranking member during floor votes late yesterday afternoon that you are issuing subpoenas. The ranking member responded immediately that doing so would be dangerous, as it puts people's privacy and safety at risk. We then immediately asked for additional information and an opportunity to discuss these subpoenas. Those requests went unanswered and, a few hours later, you issued a press release announcing that "after consultation with Ranking Member Jan Schakowsky" you would be issuing subpoenas early next week. Advising the ranking member

The Honorable Marsha Blackburn
Page 2

on the floor of the House that you intend to issue subpoenas and refusing to speak further with us does not constitute consultation.

Exercising your unilateral subpoena authority in this manner is exactly the type of abuse that we were concerned about when we asked you to adopt rules for the Select Panel. Our rules would require concurrence of the ranking member or a Panel vote, ensuring sufficient, good-faith efforts to obtain voluntary compliance before any subpoena could be issued. Unfortunately, your actions here mirror the abusive exercise of unilateral subpoena authority that has become all-too common under House Republican leadership.

Just over two months ago – on the day after Thanksgiving – an anti-abortion extremist murdered three people, injured nine others, and terrorized providers and patients at an abortion clinic in Colorado Springs. In December, another extremist was indicted for offering cash to kill an executive at one of the organizations that you are now threatening to subpoena. In that case, an anti-abortion extremist posted online that the “[company executive] should be hung by the neck using piano wire and propped up on the lawn in front of the building with a note attached.”ⁱⁱⁱ It is appalling that, in this atmosphere, you have elected to use your unilateral subpoena authority in a manner that may increase the risk for healthcare providers, clinic personnel, medical students, and researchers.

We urge you to abandon your plan to issue these subpoenas and to start working with us in a bipartisan way to ensure that we are not putting the privacy and safety of any Americans at risk.

Sincerely,

Jan Schakowsky
Ranking Member
Select Investigative Panel

Jerrold Nadler
Member
Select Investigative Panel

Diana DeGette
Member
Select Investigative Panel

Jackie Speier
Member
Select Investigative Panel

Suzan K. DelBene
Member
Select Investigative Panel

Bonnie Watson Coleman
Member
Select Investigative Panel

¹ Rules of the Committee on Energy and Commerce, 114th Congress, 10 (Jan. 14, 2015), available at <https://energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/analysis/114CommitteeRules.pdf>.

² Jessica Glenza, *Man charged for online violent threats against company over Planned Parenthood fetal tissue*, THE GUARDIAN (Dec. 17, 2015), <http://www.theguardian.com/us-news/2015/dec/17/planned-parenthood-online-violent-threats-stemexpress-fetal-tissue>.

INSERT 2–3: Statement of the Hon. Janice D. Schakowsky, a Representative in Congress from the State of Illinois

ONE HUNDRED FOURTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115
Majority (202) 225-2927
Minority (202) 225-3641

June 3, 2016

The Honorable Marsha Blackburn
Chair
Select Investigative Panel
U.S. House of Representatives
Washington, D.C. 20515

Dear Madam Chair:

I am deeply concerned by your decision this week to provide FOX News advance copies of letters to the Department of Health and Human Services (HHS) before sending them to HHS or sharing them with me. In those letters, you again allege wrongdoing by StemExpress based on documents and secret “testimony” that you continue to withhold from Democrats in violation of House rules and without affording the company the opportunity to answer your claims, something it offered to do months ago.

You also released these letters and documents without redacting the names and contact information of doctors and researchers, despite repeatedly claiming that you take individual privacy and safety concerns seriously and would protect names and personal information from public disclosure. Following the Panel’s March 2, 2016 hearing, for example, you had the following exchange with a reporter:

Question: “What do you have to say to the criticism of the subpoenas for the names of the graduate students and researchers?”

Chair Blackburn: “We’re going to continue to have the necessary information and we’re going to do everything possible to protect names and identities. You saw that with the exhibits that we brought forward today.”

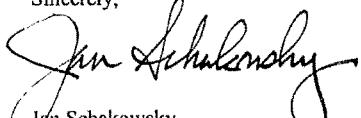
Panel Democrats have repeatedly objected to your sweeping documents requests and abuse of unilateral subpoena power, and have asked for rules that limit the information being collected and protect individual privacy and security. You have ignored our requests. As a result, the Panel now has information – including the names of researchers, doctors, and students, the records of victims of rape, and personal financial information – that Congress has no right or need to know.

The Honorable Marsha Blackburn
Page 2

You have proven the risk of having this information in the hands of Panel Republicans: there is nothing to stop you from publicly releasing any of the information that you collect.

We ask that you immediately redact names, contact information, and other personally identifiable information from the documents that you have posted on your website. We also renew our request for the special meeting that the six Democratic Members previously requested so that we can enact rules that safeguard individual privacy and safety, and bring this investigation to an end.

Sincerely,



Jan Schakowsky
Ranking Member
Select Investigative Panel

LAMAR S. SMITH, Texas
CHAIRMAN

EDDIE BERNICE JOHNSON, Texas
RANKING MEMBER

Congress of the United States House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

2321 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6301

(202) 225-6371
www.science.house.gov

June 23, 2016

The Honorable Lamar Smith
Chairman
Committee on Science, Space, and Technology
2321 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Smith,

On May 18, 2016, you wrote to 17 state and territorial attorneys general and 8 non-governmental organizations (NGOs) demanding documents related to possible investigations into fossil fuel industry fraud regarding climate change.¹ On June 17, 2016, after receiving what were presumably unsatisfactory responses from these attorneys general and NGOs, you sent a second round of demands to these same groups. These demands are an illegitimate exercise of Congressional oversight power, and I urge you to immediately cease this abuse of authority.

In a Congress in which the Committee on Science, Space, and Technology's oversight powers have been repeatedly abused, this latest action stands apart. In addition to mischaracterizing innumerable facts, laws, and legal precedents surrounding this situation, the May 18 and June 17 letters have now led the Committee on Science, Space, and Technology to the precipice of a Constitutional crisis. Never in the history of this formerly esteemed Committee has oversight been carried out with such open disregard for truth, fairness, and the rule of law.

The state and territorial attorneys general, representatives for the targeted NGOs, and 43 Democratic Members of Congress² have already written to you to patiently explain the

¹ Attorneys General from: California, Connecticut, District of Columbia, Iowa, Illinois, Massachusetts, Maryland, Maine, Minnesota, New Mexico, New York, Oregon, Rhode Island, U.S. Virgin Islands, Virginia, Vermont, Washington. NGOs: 350.org, Climate Accountability Institute, The Climate Reality Project, Greenpeace, Pawa Law Group, P.C., The Rockefeller Brothers Fund, Rockefeller Family Fund, Union of Concerned Scientists. All Committee letters and responses are available at: <http://democrats.science.house.gov/letter/document-requests-sent-state-attorneys-general-and-environmental-groups>

² Letter from Hon. Donald S. Beyer Jr. to Hon. Lamar Smith, Chairman, H. Comm. On Science, Space, & Tech. (June 2, 2016); Letter from Hon. Paul D. Tonko to Hon. Lamar Smith, Chairman, H. Comm. On

illegitimacy of your “investigation.” Since you have apparently rejected their responses, I will endeavor to highlight once more the factual and legal shortcomings of your demand letters.

The Majority's Letters Mischaracterize State Attorney General Actions

Both your May 18 and June 17 letters refer to a “coordinated attempt to attack First Amendment rights of American citizens and their ability to fund and conduct scientific research free from intimidation and threats of prosecution...”³ In laying out your factual case, you state:

This sequence of events – from the 2012 workshop to develop strategies to enlist the help of attorneys general to secure documents, to the 2016 subpoenas issued by you and other members of the Green 20 – raises serious questions about the impartiality and independence of current investigations by the attorneys general. Your office – funded with taxpayer dollars – is using legal actions and investigative tactics taken in close coordination with certain special interest groups and trial attorneys may rise to the level of an abuse of prosecutorial discretion. Further, such actions call into question the integrity of your office.⁴

Ignoring for a moment the grossly inappropriate and unsubstantiated innuendo contained in these statements, I would like to highlight the factual deficiencies in your claims.

First of all, it is important to accurately report on the actions of the state and territorial attorneys general. As the New York Attorney General’s Office noted in their response to your May 18 letter, they are investigating “whether ExxonMobil Corporation violated New York’s securities, business and consumer fraud laws by making false or misleading statements to investors and consumers relating to climate change driven risks and their impact on Exxon’s business.”⁵ In other words, these state attorneys general are investigating potential fraud under state law.

The Commonwealth of Massachusetts Office of the Attorney General laid out the factual basis for these fraud investigations in some detail in its June 2, 2016, response letter, stating:

Publicly available Exxon documents establish that at least by July 1977, Exxon’s own scientists informed Exxon management that the release of carbon dioxide from burning fossil fuels was causing global temperatures to increase, a situation that would, the scientists warned Exxon management, give rise to “the need for hard decisions regarding changes in energy strategies.” Publicly available Exxon

³ Science, Space, & Tech. (June 10, 2016); Letter from Hon. Ted W. Lieu to Hon. Lamar Smith, Chairman, H. Comm. On Science, Space, & Tech. (June 9, 2016).

⁴ Letter from Hon. Lamar Smith, Chairman, H. Comm. On Science, Space, & Tech. to Hon. Eric Schneiderman, Attorney General, May 18, 2016, pg. 4.

⁵ *Id.*

⁵ Letter from Leslie B. Dubeck, Counsel, Office of the New York Attorney General to Hon. Lamar Smith, Chairman, H. Comm. On Science, Space, & Tech., May 26, 2016, pg. 1.

documents also confirm that Exxon's scientists were, in the early 1980s, predicting significant increases in global temperature as a result of the combustion of fossil fuels, and that a 2 to 3 degree Celsius increase could lead to melting of polar ice, rising sea levels and "redistribution of rainfall," "accelerated growth of pests and weeds," "detrimental health effects," and "population migration." Exxon's scientists counseled Exxon management that it would be possible to "avoid the problem by sharply curtailing the use of fossil fuels." One Exxon scientist warned in no uncertain terms that it was "distinctly possible" that the effects of climate change over time will "indeed be catastrophic (at least for a substantial fraction of the earth's population)." Despite Exxon's early understanding of the science of climate change and the threats posed by climate change to human populations and global ecosystems, other publicly available documents suggest that Exxon may have participated in later self-interested efforts to mislead the public, including investors and consumers, with respect to the impacts of climate change in order to defeat governmental policy measures designed to address the threat of climate change.⁶

These accusations were widely reported in the press in 2015.⁷ Moreover, these accusations should have come as no surprise to you or your staff as they formed the same factual basis that compelled 20 scientists to write to the U.S. Attorney General to suggest that Racketeer Influenced and Corrupt Organizations Act (RICO) investigations might be warranted against fossil fuels companies that potentially knowingly defrauded the American public. You previously instigated an investigation against one of those scientists for exercising his constitutionally protected First Amendment right to petition the government.⁸ This is the first of many instances where the irony of your current accusations becomes evident.

Multiple state attorneys general also pointed out the legal fallacy of your accusations of First Amendment violations. For instance, the Oregon Attorney General's Office pointed out that:

[y]our letter also incorrectly accuses this office of investigating entities based on their speech or beliefs concerning climate change. Please be advised this office

⁶ Letter from Richard A. Johnston, Chief Legal Counsel, Commonwealth of Massachusetts Office of the Attorney General letter to Hon. Lamar Smith, Chairman, H. Comm. On Science, Space, & Tech., June 2, 2016, pgs. 1-2 (citations omitted).

⁷ See, e.g., Shannon Hall, *Exxon Knew About Climate Change Almost 40 Years Ago: A new investigation shows the oil company understood the science before it became a public issue and spent millions to promote misinformation*, Scientific American, Oct. 26, 2015, available at <http://www.scientificamerican.com/article/exxon-knew-about-climate-change-almost-40-years-ago/>. And, Neela Banerjee, Lisa Song, and David Hasemyer, *Exxon's Own Research Confirmed Fossil Fuels' Role in Global Warming Decades Ago*, Inside Climate News, Sep. 16, 2015, available at <http://insideclimatenews.org/news/15092015/Exxons-own-research-confirmed-fossil-fuels-role-in-global-warming>.

⁸ Press Release, H. Comm. On Science, Space, and Tech., "Smith: Taxpayer-Funded Climate Org Allegedly Seeks Criminal Penalties for Skeptics," Oct. 1, 2015, available at <https://science.house.gov/news/press-releases/smith-taxpayer-funded-climate-org-allegedly-seeks-criminal-penalties-skeptics>

will not be dissuaded from considering whether state laws, including consumer protections laws, may provide redress against knowingly false commercial speech concerning global warming. The First Amendment simply does not protect fraudulent speech. *Illinois v. Telemarketing Associates, Inc.*, 538 U.S. 600, 612 (2003); *Donaldson v. Read Magazine, Inc.*, 333 U.S. 178, 190 (1948) (“This government power [to protect people against fraud] has always been recognized in this country and is firmly established.”).⁹

The notion that fraudulent speech is not protected by the U.S. Constitution would seem to be beyond dispute. Nonetheless, despite the state attorneys generals pointing very specifically to the factual and legal deficiencies of your accusations, your June 17, 2016, letters persist in leveling these baseless accusations against the attorneys general, stating:

This statement suggests that your office, as an arm of state government, will decide what science is valid and what science is invalid. In essence, you are saying that if your office disagrees with whether fossil fuel companies’ scientists were conducting and using the “best science,” the corporation could be held liable for fraud. Not only does the possibility exist that such action could have a chilling effect on scientists performing federally funded research, but it also could infringe on the civil rights of scientists who become targets of these inquiries. Your actions violate the scientists’ First Amendment rights. Congress has a duty to investigate your efforts to criminalize scientific dissent.¹⁰

Nothing in that assertion bears any relationship to the statements of the various state attorneys general. These state investigations have nothing to do with deciding “what science is valid and what science is invalid.” The investigations, as multiple attorneys general pointed out, are concerned with whether certain fossil fuel companies believed or knew one set of facts, and yet publically disseminated another in order to enrich themselves at others expense. These allegations constitute textbook fraud.¹¹

These investigations have a well-known precedent. In the 1990s, various state attorneys general sued tobacco companies for the state-borne healthcare costs associated with tobacco use. One of the bases for the claims was that the tobacco industry engaged in a conspiracy to conceal and misrepresent “the addictive and harmful nature of tobacco/nicotine.”¹² These suits resulted in the Master Settlement Agreement in 1998, where the four largest tobacco companies settled all pending state claims related to the healthcare costs related to tobacco.¹³ The Federal Government soon followed suit. In

⁹ Letter from Frederick M. Boss, Deputy Attorney General, Oregon Department of Justice letter to Hon. Lamar Smith, Chairman, H. Comm. On Science, Space, & Tech., June 1, 2016, pg. 2.

¹⁰ Letter from Hon. Lamar Smith, Chairman, H. Comm. On Science, Space, & Tech. to Hon. Eric Schneiderman, Attorney General, June 17, 2016, pg. 3.

¹¹ Black’s Law Dictionary defines fraud as: “A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment.” Black’s Law Dictionary 670 (7th ed. 1999).

¹² Civil Action Complaint, Commonwealth of Pennsylvania, *Commonwealth of Pennsylvania v. Philip Morris, Inc.*, pg. 10, April 1997.

¹³ Tobacco Control Legal Consortium, *The Master Settlement Agreement: An Overview*, available at <http://www.publichealthlawcenter.org/sites/default/files/resources/tclc-fs-msa-overview-2015.pdf>

1999 the U.S. Department of Justice brought RICO Act actions against the largest tobacco companies.¹⁴ The parallels of that case with the current state attorneys general investigations cannot be overstated. In *U.S. v. Philip Morris*, the government alleged that the tobacco industry internally knew of the health risks of their products for decades, yet engaged in a well-financed conspiracy to deceive the American public about the health effects of tobacco. This included financing scientific studies questioning the links between tobacco and health problems and the creation of front organizations to hide links to the tobacco financing. The U.S. government won the case, and the decision was upheld on appeal.¹⁵

I have repeatedly criticized your tendency to rely upon former tobacco industry-funded scientists, consultants, and public relations firms in past Committee investigations and hearings.¹⁶ Given your past reliance on such “experts”, it’s perhaps unsurprising that you are now questioning these legitimate state attorneys general investigations of potential fraudulent actions against the American people.

The Majority’s Investigation of State Attorneys General is Unconstitutional

A Congressional document demand to a state attorney general is exceptionally unusual. Such a demand from the Science Committee is unheard of.

State attorney generals are elected officials of sovereign state governments. They are not employees of the Federal Government, nor are they subject to federal oversight or control, including by the United States Congress.

You note in your June 17 letter that Congress’s oversight powers are well established and broad, citing such authorities as the “U.S. Constitution, Art. 1; *McGrain v. Daugherty*, 273 U.S. 135 (1927) (Congress was investigating the U.S. Dep’t of Justice’s handling of the Teapot Dome scandal); *Eastland v. United States Servicemen’s Fund*, 421 U.S. 491 (1975)(U.S. Senate committee investigating the activities of U.S. Servicemen’s Fund and their effect on the morale of members of the Armed Services).”¹⁷ The existence of Congress’s oversight powers goes without saying, and is a well-established principle of law. You go on to make an important point about the source of Congressional oversight power, stating:

¹⁴ U.S. Department of Justice, *Litigation Against Tobacco Companies Home*, <https://www.justice.gov/civil/case-4>

¹⁵ *United States v. Philip Morris USA, Inc.*, 566 F.3d 1095 (D.C. Cir. 2009).

¹⁶ See, e.g., Letter from Hon. Eddie Bernice Johnson, Ranking Member, to Hon. Lamar Smith, Chairman, H. Comm. On Science, Space, & Tech., August 6, 2013, available at <http://democrats.science.house.gov/sites/democrats.science.house.gov/files/Letter.pdf>

And, *Ensuring Open Science at EPA: Hearing Before the Subcomm. On the Environment of the H. Comm. On Science, Space, & Tech.*, 113th Cong. 16-17 (2014) (statement of Hon. Eddie Bernice Johnson, Ranking Member).

¹⁷ Letter from Hon. Lamar Smith, Chairman, H. Comm. On Science, Space, & Tech. to Hon. Eric Schneiderman, Attorney General, June 17, 2016, pg. 1 (note).

Hand in hand with Congress' legislative power is its power to investigate. Indeed, in 1975, when commenting on Congress' investigative power, the Supreme Court stated that the "scope of its power of inquiry... is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution."¹⁸

This analysis is particularly relevant to the "investigation" at hand. Congress's broad oversight powers are directly tied to our power to legislate. Thus, by the authority you have relied upon in your own letters, Congress has no legal oversight authority over issues or actions that fall outside Congress's legislative authority.

As nearly every state attorney general who responded to your May 18 letters indicated, state government law enforcement officials acting in their official capacities are not within Congress' legislative control. For instance, in its May 27, 2016, response to your demand letter, the California Attorney General's Office noted:

[w]e do not believe it is within the jurisdiction of Congress to demand documents from a state law enforcement official such as the California Attorney General. Although Congress' investigative jurisdiction is broad, that is because it tracks Congress' power to legislate and appropriate concerning federal matters. But the power to investigate does not extend beyond those matters. (See, e.g. *Barenblatt v. U.S.* (1959) 360 U.S. 109, 111 ["Congress may only investigate into those areas in which it may potentially legislate or appropriate"].) Investigations and prosecutions of state law enforcement actions by state attorneys general are not federal matters. To the contrary, under the Constitution and laws of the United States, such activities partake of police powers reserved to the states, and are not subject to federal interference. (See, e.g., *New York v. U.S.* (1992) 505 U.S. 144, 162 ["the Constitution has never been understood to confer upon Congress the ability to require the States to govern according to Congress' instructions"].)¹⁹

As a reminder, the Tenth Amendment to the U.S. Constitution reads as follows:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.²⁰

Implicit in the powers reserved to the states under the Tenth Amendment are state police powers. In case after case, the courts have struck down Congressional attempts to regulate state government activities, including exercise of their police powers.²¹ It is clear that Congress has no legislative authority to dictate the actions of state attorneys general.

¹⁸ *Id.* at 1, citing *Eastland v. United States Servicemen's Fund*, 431 U.S. 491, 504 n. 15 (1975) (quoting *Barenblatt v. United States* 360 U.S. 109, 111 (1959)).

¹⁹ Letter from Martin Goyette, Senior Assistant Attorney General, State of California Department of Justice letter to Hon. Lamar Smith, Chairman, H. Comm. On Science, Space, & Tech., May 27, 2016, pg. 2.

²⁰ U.S. Const. amend. X.

²¹ See, e.g., *United States v. Lopez*, 514 U.S. 549 (1995) (striking down a gun-free school zone provision); *United States v. Morrison*, 529 U.S. 598 (2000) (invalidating a provision of the Violence Against Women Act); and, *United States v. Constantine*, 296 U.S. 287 (1935) (invalidating an excise tax imposed on violators of local law).

Even if Congress did have some inroad into regulation of state police powers, such a legislative authority would not rest with the Committee on Science, Space, and Technology. Our oversight jurisdiction (which is broader than our actual legislative jurisdiction) encompasses “laws, programs, and Government activities relating to nonmilitary research and development.”²² Note that the capitalization of the word “Government” gives the word the meaning “Federal Government.” Nowhere in our jurisdiction - legislative or oversight - can one find justification for our Committee’s oversight of state police powers. The elected officials that serve as state attorney generals are answerable to their respective constituents and the courts, but not to the U.S. Congress. As my colleagues from Virginia, the District of Columbia, and Maryland pointed out:

States’ rights long being a central pillar of conservative philosophy, the Letter’s effort to meddle directly in the self-governance and prosecutorial discretion of 17 U.S. state and territories is not lacking for irony.²³

The Majority’s Investigation of NGOs’ Exercise of Free Speech is Unconstitutional

The First Amendment to the U.S. Constitution reads, in whole:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.²⁴

While the First Amendment prohibits government interference with the free speech rights of individuals, that prohibition is not absolute. One relevant example is that fraudulent speech is not protected by the First Amendment.²⁵ Moreover, the First amendment does not provide an absolute shield against legitimate Congressional oversight. In that regard, you state in your June 17 letter to the various NGOs:

In *Barenblatt v. United States*, the Supreme Court stated “where the First Amendment rights are asserted to bar government interrogation resolution of the issue always involves a balancing by the courts of the competing private and public interests at stake in the particular circumstances shown.” Moreover, when balancing the interests of the parties in *Watkins v. United States*, the Court held “the critical element is the existence of, and the weight to be ascribed to, the interest of the Congress in demanding disclosure from an unwilling witness.” These cases are important precisely because they provide examples of congressional investigations – sustained by the Supreme Court – involving

²² House Rule X(3)(k).

²³ Letter from Hon. Donald S. Beyer Jr., to Hon. Lamar Smith, Chairman, H. Comm. On Science, Space, & Tech., June 2, 2016, pg. 2.

²⁴ U.S. Const. amend. 1.

²⁵ See, *Illinois v. Telemarketing Associates, Inc.*, 538 U.S. 600, 612 (2003).

organizations similar to yours. The parties being investigated in the cases noted above are no different than the recipients of the Science Committee's May 18 letter.²⁶

Since this is the only real legal authority you cite as justification for investigating Americans' constitutionally protected speech, I think it is worth scrutinizing.

First, I would like to point out the context of these cases. Both of these cases involved the notorious House Un-American Activities Committee (HUAC), and investigations that committee conducted into the private lives of American citizens. If ever there was an example of a "witch hunt" in the history of the United States Congress, the HUAC investigations best fit the bill. For that reason, it is more than a little disconcerting that you think those cases' fact patterns so closely resemble your own investigation.

I would also like to point to an error in your statement. You state that both of these cases are important because "they provide examples of congressional investigations – sustained by the Supreme Court – involving organizations similar to yours."²⁷ This statement is false. In *Watkins v. United States*, the Supreme Court overturned a conviction under 2 U.S.C. 192 against an individual who refused to provide certain testimony to HUAC.²⁸ The Watkins Court held that the conviction was invalid under the Due Process Clause of the Fifth Amendment.

Rather than supporting the legal grounds of your investigation, the *Watkins* decision is actually an indictment against it. The *Watkins* court noted that:

The Court recognized the restraints of the Bill of Rights upon congressional investigations in *United States v. Rumely*, 345 U.S. 41... It was concluded that, when First Amendment rights are threatened, the delegation of power to the committee must be clearly revealed in its charter.²⁹

The *Watkins* Court went on to state:

Kilbourn v. Thompson teaches that such an investigation into individual affairs is invalid if unrelated to any legislative purpose. That is beyond the powers conferred upon the Congress in the Constitution. *United States v. Rumely* makes it plain that the mere semblance of legislative purpose would not justify an inquiry in the face of the Bill of Rights.³⁰

As I noted earlier, it is clear that our Committee doesn't even have a semblance of a legislative purpose that would justify this investigation. It is inconceivable that our

²⁶ Letter from Hon. Lamar Smith, Chairman, H. Comm. On Science, Space, & Tech. to Richard Heede, Climate Accountability Institute, June 17, 2016, pg. 4 (citations omitted).

²⁷ *Id.* emphasis added.

²⁸ *Watkins v. United States*, 354 U.S. 178 (1957).

²⁹ *Id.* at 198.

³⁰ *Id.*

Committee, based on our House Rule X jurisdiction, could legislate on any topic related to state law enforcement, private speech, private citizens exercising their First Amendment right to petition their government, or fraud. In fact, the only plausible legislative action that Congress as a whole could take in this instance would be in altering Federal fraud and RICO Act statutes to inappropriately help big oil avoid potential liability. However, even in that instance, such a bill would not come anywhere near the jurisdiction of the Committee on Science, Space, and Technology.

Your June 17 letter claims legislative jurisdiction over this “investigation” because we oversee \$31.8 billion in annual federal government research expenditures. Somehow you link the Committee’s specific jurisdiction to fund federal scientific research to being the science police for the United States. Even if we had such expansive jurisdiction (and we do not), it would still fall far short of having jurisdiction over state police powers or fraud laws, which are the true subject matters of this “investigation.” Thus, based on the legal authorities you yourself have cited, this “investigation” violates the Constitution.

This “Investigation” is Illegitimate

In the foregoing, I have pointed out the many factual and legal shortcomings and mischaracterizations contained in your May 18 and June 17 letters. Sadly, despite having these shortcomings previously noted to you, this misguided effort is continuing. In reality, this overreach is simply the culmination of three years of “oversight” run amuck. When you assumed the Chairmanship of this Committee, Members were promised an ambitious and bipartisan legislative agenda. That did not materialize. What has taken its place is a series of increasingly disturbing “fishing expeditions” masquerading as oversight.

I noted your May and June letters contain a great deal of unintentional irony. I’ll note one more example. In your June 17 letter, as a justification for your current investigation you say:

[C]ongress has a responsibility to investigate whether such investigations are having a chilling effect on the free flow of scientific inquiry and debate regarding climate change.³¹

Here, you could just as well be referring to your own misguided investigation into eminent NOAA climate scientists last year. In that “investigation” you actually subpoenaed NOAA Administrator, former astronaut, and authentic American hero Dr. Kathy Sullivan in an attempt to obtain the email communications of world renowned NOAA climate scientists.³² What was the purpose of this investigation? It was simply a fishing expedition against scientists who reached a scientific conclusion with which you

³¹ Letter from Hon. Lamar Smith, Chairman, H. Comm. On Science, Space, & Tech. to Richard Heede, Climate Accountability Institute, June 17, 2016, pg. 3.

³² Committee on Science, Space, and Technology Subpoena Duces Tecum issued by Hon. Lamar Smith, Chairman, to Hon. Kathryn Sullivan, 114th Cong., October 13, 2015.

personally disagreed. In the end, your investigation, like so many recent Science Committee investigations, found nothing.

I have served on the Committee on Science for more than two decades, and during that time this Committee has accomplished great things. We've overseen the completion of the International Space Station and the sequencing of the human genome, and we've undertaken serious investigations, ranging from the Space Shuttle Challenger accident to the environmental crimes at the Rocky Flats nuclear site. However, lately the Committee on Science has seemed more like a Committee on Harassment. The Committee's prolific, aimless, and jurisdictionally questionable oversight activities have grown increasingly mean-spirited and meaningless. They frequently appear to be designed primarily to generate press releases. However, none of these recent investigations has rushed head long into a serious Constitutional crisis like we are about to face. We are moving into dangerous and uncharted territory.

At the beginning of this Congress I swore an oath to uphold the Constitution. I take that oath seriously. As evidenced by the letters you have received from Democratic Members from New York, California, Virginia, Maryland, and the District of Columbia, the Democratic Members of the Committee also take this oath seriously. We will not sit idly by while the powers of the Committee are used to trample on the Bill of Rights of the U.S. Constitution. I implore you to cease your current actions before they do lasting institutional damage to the Committee on Science, Space, and Technology and the Congress as a whole.

Thank you for your attention to this matter.

Sincerely,



EDDIE BERNICE JOHNSON
Ranking Member
Committee on Science, Space, and Technology

Cc: Members of the Committee on Science, Space, and Technology

California, Connecticut, District of Columbia, Iowa, Illinois, Massachusetts, Maryland, Maine, Minnesota, New Mexico, New York, Oregon, Rhode Island, U.S. Virgin Islands, Virginia, Vermont, Washington Attorneys General and 350.org, Climate Accountability Institute, The Climate Reality Project, Greenpeace, Pawa Law Group, P.C., The Rockefeller Brothers Fund, Rockefeller Family Fund, Union of Concerned Scientists

JASON CHAFFETZ, UTAH
CHAIRMAN

ONE HUNDRED FOURTEENTH CONGRESS

ELIJAH E. CUMMING, MARYLAND
RANKING MINORITY MEMBER

Congress of the United States
House of Representatives

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September 9, 2016

The Honorable Jason Chaffetz
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I have served as a Member of Congress since 1996, and during that time I have staunchly supported the Congressional oversight function and the Constitutional prerogatives of the House of Representatives in conducting investigations on behalf of the American people.

Over the past two decades, I have supported both Democratic and Republican chairmen in their efforts to secure the cooperation of key witnesses and the production of relevant documents to improve the effectiveness and efficiency of government and better the lives of our constituents. Even when I disagreed with the policy goals of my colleagues on the other side of the aisle, I have defended the authority of our Committee.

However, this is the first time during my twenty years in Congress that I have witnessed the oversight power of this Committee used in such a transparently political manner to directly influence a presidential election, and I can understand why witnesses would not want to participate in this effort.

The Committee has been using taxpayer dollars to target Secretary Clinton in an effort to damage her campaign for president. This Committee and others have been using the authority of Congress to engage in an astonishing onslaught of political attacks against Secretary Clinton.

These actions are an egregious abuse of authority and an inappropriate use of taxpayer funds for political purposes. Worse, they undermine our credibility as a Committee and directly contradict the Constitutional mission we are supposed to serve.

The pattern is clear. Republicans publicly accuse Secretary Clinton of illegal activity without evidence, generate breathless headlines, and demand investigations. But when these investigations come up empty, Republicans simply invent more accusations and launch more investigations—repeating the work of previous inquiries in the process.

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Exhibit A is Benghazi. Even though these tragic attacks had been investigated in a bipartisan manner many times before, Secretary Clinton agreed to testify again before the Select Committee, and for more than 11 hours, she answered every conceivable question posed to her.

When the Benghazi investigations failed to substantiate Republican claims that Secretary Clinton ordered the military to “stand down” or other outlandish conspiracy theories, Republicans demanded a criminal investigation of her emails—and they got it. Career law enforcement officials at the FBI conducted an exhaustive, independent investigation, and they determined unanimously that there was simply no case.

This was not the answer that you and other Republicans wanted. So, even though you, Speaker Ryan, and other Republicans had praised the FBI Director just days earlier as a model of independence, you reversed course and proceeded to attack the integrity of the investigation and the FBI Director himself.

In response, the FBI Director made the unprecedented decision to testify before our Committee in detail about the evidence they obtained, the law they applied, and the decision-making process they employed. He described how an “all-star team” of experienced investigators conducted this investigation. He even agreed to share with Congress and the public documents from the investigation in an effort to put these issues to rest.

Rather than accept these conclusions from career law enforcement officials, you and Judiciary Committee Chairman Goodlatte disregarded their findings and sent new criminal referrals to the Justice Department accusing Secretary Clinton and her aides of perjury and obstruction of justice, claiming that they directed the intentional destruction of emails to conceal them from investigators.

You made these referrals despite the fact that the FBI Director had explained: “we found no evidence that any of the additional work-related e-mails were intentionally deleted in an effort to conceal them.” As the FBI Director emphasized this week in a memo to his staff, “the case itself was not a cliff-hanger.”

Your criminal referrals are ludicrous on their face, but they follow the same Republican pattern—accuse, investigate, fail, repeat.

This week, you began issuing a flurry of desperate subpoenas—without any debate or vote by the Committee—demanding that several individuals appear on Tuesday at an emergency hearing to reinvestigate claims that Secretary Clinton or her aides ordered the destruction of documents to hide them from investigators.

For example, just two days ago, you sent a letter to Bryan Pagliano, the former IT specialist who worked on Secretary Clinton’s email system, promising a subpoena for a hearing less than one week away.

As you know, Mr. Pagliano was already interviewed by the FBI. Obviously, he was concerned by the criminal accusations that many Republicans in Congress were making against him, but he spoke with the independent law enforcement authorities at the FBI, and they awarded

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him immunity. The FBI has provided the Committee with the results of that interview, but you are now demanding to hear directly from Mr. Pagliano because you disagree with the conclusions the FBI made.

When Chairman Gowdy issued his own unilateral subpoena to force Mr. Pagliano to testify before the Benghazi Select Committee amidst these reckless Republican accusations, Mr. Pagliano asserted his Fifth Amendment privilege and exercised his Constitutional right to remain silent. Despite this fact, you now apparently want Mr. Pagliano to come before our Committee again to assert this privilege for a second time.

There is no legitimate reason that our Committee should force Mr. Pagliano to come before us just to take the Fifth Amendment before Congress yet again. This appears to be nothing more a public relations stunt to generate more headlines—and perhaps a photo op. It has no credible purpose or function whatsoever.

Mr. Pagliano is not alone. You invited several other individuals to Tuesday's hearing who were also previously interviewed by the FBI, including Paul Cometta and Bill Thornton of Platte River Networks.

You sent these invitation letters on Wednesday, just one day after you publicly asked the Justice Department to re-open a criminal investigation against them. In your letters on Wednesday, you said you would give these individuals until today to consult with their attorneys and respond. But you did not even wait 48 hours. Instead, late last night, you rushed to issue unilateral subpoenas demanding that they attend the emergency hearing on Tuesday.

By taking these actions, you are staging a set-up. First, you accuse them of criminal activity without evidence and refer them for criminal investigation. Then you rush to subpoena them to testify without any debate or vote, virtually guaranteeing that some will invoke the Fifth Amendment when their attorneys advise them to steer far clear of our Committee.

I can understand why some witnesses may want no part of this political circus. This is not a credible investigation in pursuit of legitimate oversight. This is a farce. It takes partisan gamesmanship to an entirely new level, and it undermines the integrity of our Committee.

I urge you with all sincerity to immediately abandon this misguided, inappropriate, and illegitimate use of taxpayer funds to affect the upcoming presidential election.

Sincerely,



Elijah E. Cummings
Ranking Member